# TRANSCRIPT OF RECORD

## United States Court Of Appeals

TENTH CIRCUIT

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No. 5610

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LUPE ALONZO, JIM ALONZO, JOE ALONZO and VALENTINO ALONZO, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

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Appeal From The United States District Court
For The District Of New Mexico

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IN THE UNITED STATES COURT OF APPEALS
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VALENTINO ALONZO, Appellants,

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Points Upon Which Appellants
Intend To Rely.

1. The District Court erred in finding that the United States as a legal entity had such an interest in Civil 8016, Valencia County, State of New Mexico as would give it a right to petition the United States District Court for the District of New Mexico for a preliminary injunction enjoining the appellants in this Court from prosecuting the action in the State Court.

2. The District Court erred in finding that the United States alleged sufficient grounds in its petition to justify the issuance of the preliminary injunction.

3. The District Court erred in finding that there was sufficient evidence upon which to base the issuance of the preliminary injunction.

4. The District Court erred in issuing the preliminary injunction enjoining the appellants in this Court from prosecuting Civil Action 8016, Valencia County, State of New Mexico.

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Filed April 6, 1957.

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Alonzo vs. United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

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Pleas And Proceedings Before The Honorable Waldo H. Rogers, United States District Judge For The District Of New Mexico Presiding In The Following Entitled Cause:

UNITED STATES OF AMERICA, Plaintiff,

vs.

LUPE ALONZO, JIM ALONZO, JOE ALONZO, VALENTINO ALONZO, JAMES GARCIA, JOHN HERNDON and THE ANACONDA COMPANY (formerly ANACONDA COPPER MINING COMPANY, a corporation, Defendants.

No. 3407, Civil.

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1] Complaint.

The United States of America, in its own behalf and in behalf of the Pueblo of Laguna, by Paul F. Larrazolo, United States Attorney for the District of New Mexico, acting under the authority of the Attorney General and at the request of the Secretary of the Interior, complains and alleges as follows:

First Claim for Relief
(Paguate Purchase Lands)

I. This Court has jurisdiction of this action under 28 U.S.C. sec. 1345.

II. The sovereignty of the United States was extended over the territory now included in the State of New Mexico (with exceptions not here material) by the Treaty of Guadaloupe Hidalgo (9 Stat. 922).

III. The Pueblo of Laguna is a nation or tribe of Indians recognized by Congress as a dependent Indian community, the

members of which are wards of the United States. The Pueblo of Laguna occupies (1) lands which are owned by the Pueblo in fee, subject to restrictions imposed by federal law which render such lands inalienable except with the consent of the United States, and (2) lands to which the fee title is owned by the United States for the use of the Pueblo of Laguna, as more specifically set forth in the following paragraphs.

2] IV. Prior to the Treaty of Guadaloupe Hidalgo, the Pueblo of Laguna possessed a good and complete title to all that tract of land within the territory of New Mexico known as the Paguate Grant or the Paguate Purchase.

V. The title of the Pueblo of Laguna to the lands within the Paguate Purchase was confirmed by Act of Congress of June 21, 1860, 12 Stat. 71, as Claim No. 30 on a list of claims recommended for confirmation by the Surveyor General pursuant to the Act of July 22, 1854, 10 Stat. 308, in his report and abstract marked Exhibit A as communicated to Congress by the Secretary of the Interior in his letter dated February 3, 1860.

VI. The title of the Pueblo of Laguna to the lands within the Paguate Purchase was further confirmed by a patent dated September 22, 1884, from the United States to the said Pueblo, which covered an area of 75,406.27 acres, more or less.

VII. By Act of June 7, 1924, 43 Stat. 636, hereinafter referred to as the Pueblo Lands Board Act, Congress created the Pueblo Lands Board and authorized said board to investigate the titles to lands claimed by the various Indian Pueblos under grants from Spain and Mexico.

VIII. The Pueblo Lands Board investigated the claim of the Pueblo of Laguna to the lands included in the Paguate Purchase and found there was a conflict between the Paguate Purchase and the Cubero Grant of 1833 as to a portion of the Paguate Purchase as described in the patent dated September 22, 1884. The Pueblo Lands Board further found that the title of the claimants to the Cubero Grant was superior to the claim of the Pueblo of Laguna, as to the conflicting portion of the Paguate Purchase. Under the Pueblo Lands Board Act, this finding had the effect of extinguishing the

claim of the Pueblo of Laguna to that portion of the Paguate Purchase in conflict with the Cubero Grant amounting to 10,601.86 acres, more or less.

3] IX. The Pueblo Lands Board found that there was a further conflict between the Paguate Purchase and the lands claimed by the owners of the Cebolleta Grant and certain private land claimants. The Board found that the claim of the Pueblo of Laguna was superior to the title of the adverse claimants.

X. The Pueblo Lands Board found that there was a further conflict between the Paguate Purchase and the lands claimed by the owners of the Baca Grant of 1769. The Board found that the claim of the Pueblo of Laguna was superior to the title of the adverse claimants.

XI. The Pueblo Lands Board determined that, except for the area of 10,601.86 acres, more or less, which was found to be a part of the Cubero Grant, the Pueblo of Laguna had a superior title to all of the land within the Paguate Purchase, as described in the patent dated September 22, 1884.

XII. Pursuant to section 3 of the Pueblo Lands Board Act, an action was instituted by the United States in the United States District Court for the District of New Mexico to quiet the title of the Pueblo of Laguna to the lands involved in the conflicts between the Paguate Purchase and the Cebolleta and Baca Grants, the title of said action being United States v. Armijo et al., No. 2080 in Equity.

4] XIII. On July 20, 1931, upon stipulation of the parties a final decree was entered by the United States District Court settling the conflict between the Paguate Purchase and the Cebolleta Grant. By this decree title was quieted against the United States and the Pueblo of Laguna in favor of the owners of the Cebolleta Grant and 72 private claimants to 10,698.93 acres, more or less, and title to 14,615.76 acres, more or less, involved in this conflict was quieted in the Pueblo of Laguna.

XIV. By final degree of November 7, 1931, filed November 9, 1931, in the United States District Court for the District of New Mexico, the conflict between the Paguate Purchase and the Baca Grant was settled. The decree quieted

title against the United States and the Pueblo of Laguna in favor of the claimants under the Baca Grant to 2,527.29 acres, more or less, and title to 3,853.63 acres, more or less, involved in this conflict was quieted in the Pueblo of Laguna.

XV. Subsequent to the entry of the final decrees as alleged in Paragraphs XIII and XIV above, plats were prepared in the General Land Office, now the Bureau of Land Management, showing the lands awarded to the Pueblo of Laguna, the owners of the Cebolleta Grant, including the 72 private claimants, and the owners of the Baca Grant, which plats were each approved on or about May 13, 1935, by the Judge of the United States District Court for the District of New Mexico as provided by section 9 of the Pueblo Lands Board Act. Said plats showing the ownership of the lands quieted in the Pueblo of Laguna remain of record in the Bureau of Land Management.

5] XVI. The Pueblo of Laguna remains the owner and entitled to the exclusive possession of 51,578.19 acres, more or less, of the original Paguate Purchase. (The 51,578.19 acres is the area of the original Paguate Purchase less 10,601.86 acres found by the Pueblo Lands Board to be a part of the Cubero Grant, and 10,698.93 acres decreed to the owners of the Cebolleta Grant and private claimants and 2,527.29 acres decreed to the owners of the Baca Grant in No. 2080 in Equity.) The 51,578.19 acres, more or less, are described as follows:

[The description is set out in the preliminary injunction, page 32 .]

8] There are excepted from the above described lands the lands awarded by the decrees in Docket No. 2080 to the owners of the Baca Grant, described more particularly hereinafter in Paragraph XXV, and the lands awarded the owners of the Cebolleta Grant, described as follows:

[The description is set out in preliminary injunction, page 34 .]

10] (The lands last above described overlap to some extent both the Baca and Cubero Grants.)

XVII. The Pueblo of Laguna, with the approval of the Department of the Interior, has granted the defendant Anaconda Copper Mining Company, now The Anaconda Company, a permit to prospect for uranium and other minerals associated therewith covering lands owned by the Pueblo of Laguna within the Paguate Purchase. The prospecting permit is dated October 18, 1951, and was approved by the Department of the Interior November 6, 1951. By amendments, the said prospecting permit has been reduced in acreage but as to the reduced acreage remains in full force and effect.

11] XVIII. The Pueblo of Laguna on March 27, 1952, granted the defendant, Anaconda Copper Mining Company, now The Anaconda Company, a mining lease for the extraction of uranium and other minerals associated therewith covering lots 2, 3 and 4, section 1, lots 1, 2 and 3 and SW 1/4 NE 1/4, section 2, Township 10 North, Range 5 West, and S 1/2 NE 1/4, section 34, E 1/2 SW 1/4, E 1/2 W 1/2 SW 1/4, S 1/2, NW 1/4, NW 1/4 SE 1/4 and S 1/2 SE 1/4, section 35 and S 1/2 SW 1/4 and SW 1/4 SE 1/4, section 36, Township 11 North, Range 5 West, N.M.P.M., containing 799.09 acres, more or less, within the Paguate Purchase lands as described in Paragraph LXV, which lease was approved May 7, 1952, by the Department of the Interior as required by law. The said mining lease remains in full force and effect. Defendant John Herdon is the General Manager of The Anaconda Company.

XIX. Beginning prior to the Treaty of Guadaloupe Hidalgo and at all times since, the Pueblo of Laguna has been and now is the owner in fee simple, subject to the restrictions on alienability imposed by the United States, of all the lands described in Paragraph XVI above and during all of that time the Pueblo of Laguna has been and now is in the open, notorious, actual, exclusive, continuous and adverse possession of said lands.

XX. The defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia are members of the Pueblo of Laguna and as members have the right to the use and occupancy of the tribal lands of the Pueblo in common with all other members.

12] XXI. The defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia are claiming some

right, title or interest, apart from their rights as members of the Pueblo of Laguna, in the lands described in Paragraph XVI above adverse to the Pueblo of Laguna, which constitutes a cloud upon the title of the Pueblo of Laguna to said lands.

Wherefore, the plaintiff prays that judgment be entered quieting the title of the Pueblo of Laguna to the lands within the Paguate Purchase described in Paragraph XVI above subject to the rights of The Anaconda Company under the prospecting permit dated October 18, 1951, as amended and supplemented, and under the mining lease dated March 27, 1952, as amended and supplemented, and adjudging that the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia have no right, title or interest in or to said lands, except such rights as they possess as members of the Pueblo of Laguna.

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Second Claim for Relief
(Lands Purchased by the Pueblo of Laguna)

XXII. The plaintiff adopts by reference as part of its second claim for relief Paragraphs I, II, III and XX from its first claim for relief.

XXIII. The Pueblo of Laguna owns by purchase from the Board of Trustees of the Cebolleta Land Grant, a New Mexico corporation, the following described lands:

13] [Here follows the description of the lands. This description is set out in the preliminary injunction, page 35 .]

15] The said lands were conveyed to the Pueblo of Laguna by deed dated April 16, 1937, and recorded in the records of Valencia County, New Mexico, in Book A-31 at folio 240.

XXIV. The lands purchased by the Pueblo of Laguna and described in the foregoing paragraph are a portion of the lands awarded to the Board of Trustees of the Cebolleta Land Grant by the final decree of this Court of July 20, 1931, in Docket No. 2080 Equity as more specifically set out in Paragraphs IX, XII and XIII above.

XXV. The Pueblo of Laguna owns by purchase from Cruz

Baca and Tiburcia Baca, his wife, the following described lands:

[Here follows the description of the lands. This description is set out in the preliminary injunction, page 37 .]

20] (This description is based upon a survey of the lands made subsequent to the final decree in Docket No. 2080, resulting in minor corrections in the description and a small decrease in the acreage.) The said lands were conveyed to the Pueblo of Laguna by deed dated December 9, 1936, and recorded in the records of Valencia County, New Mexico, in Book A-31 at folio 86.

XXVI. The lands described in the foregoing paragraph are the identical lands awarded the owners of the Baca Grant by the decree of this Court in Docket No. 2080 Equity as more specifically set out in Paragraphs X, XII and XIV above.

XXVII. The Pueblo of Laguna owns by purchase from Cruz Baca and Tiburcia Baca, his wife, among other lands, the NE 1/4 sec. 21 and N 1/2 sec. 22, Township 11 North, Range 6 West, N.M.P.M. The said lands were conveyed to the Pueblo of Laguna by deed dated July 31, 1939, and recorded in the records of Valencia County, New Mexico, in Book A-33, at page 126. The lands conveyed by this deed are not within the Paguate Purchase, but adjoin it on the north.

XXVIII. The Pueblo of Laguna is the owner and entitled to the exclusive possession of all the lands described in Paragraphs XXIII, XXV and XXVII above.

XXIX. The defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia are claiming some right, title or interest, apart from their rights as members of the Pueblo of Laguna, in and to the lands described in Paragraphs XXIII, XXV and XXVII above adverse to the Pueblo of Laguna, which constitutes a cloud upon the title of the Pueblo of Laguna to said lands.

21] Wherefore, the plaintiff prays that judgment be entered quieting the title of the Pueblo of Laguna in and to the lands described in Paragraphs XXIII, XXV and XXVII above

and adjudging that the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia have no right, title or interest in or to said lands, except such rights as they possess as members of the Pueblo of Laguna.

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Third Claim for Relief
(El Rito, San Juan and Gigante Rancho Lands)

XXX. The plaintiff adopts by reference as part of its third claim for relief Paragraphs I, II, III and XX from its first claim for relief.

XXXI. The Pueblo of Laguna prior to the time the United States extended its sovereignty over such lands by the Treaty of Guadaloupe Hidalgo, 9 Stat. 922, had a good and complete title to lands now in the State of New Mexico known as the El Rito, San Juan and Gigante Ranchos. Those ranchos included, among others, the following described lands:

[The description is set out in the preliminary injunction, page 41 .]

22]XXXII. The title of the Pueblo of Laguna to the lands described in the foregoing paragraph was confirmed by Act of Congress of June 21, 1860, 12 Stat. 71, by patent dated September 22, 1884, from the United States to the Pueblo of Laguna, and by the report of the Pueblo Lands Board made pursuant to the Act of February 7, 1924, 43 Stat. 636.

XXXIII. The Pueblo of Laguna is the owner and entitled to the exclusive possession of the lands described in Paragraph XXXI above and beginning prior to the Treaty of Guadaloupe Hidalgo and at all times since has been in the open, notorious, actual, exclusive, continuous and adverse possession of such lands.

XXXIV. The defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia are claiming some right, title or interest, apart from their rights as members of the Laguna Pueblo, in the lands described in Paragraph XXXI above adverse to the Pueblo of Laguna which constitues a cloud upon the title of said Pueblo.

Wherefore, the plaintiff prays that judgment be entered quieting title of the Pueblo of Laguna to the lands described in Paragraph XXXI above and adjudging that the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia have no right, title or interest in or to said lands, except such rights as they possess as members of the Pueblo of Laguna.

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Fourth Claim for Relief
(Executive Order Indian Reservation Lands)

XXXV. The plaintiff adopts by reference as part of its fourth claim for relief Paragraphs I and XX from its first claim for relief.

23] XXXVI. By Executive Orders No. 1221, dated July 1, 1910, and No. 2549, dated March 21, 1917, there were withdrawn and set aside as a reservation for the Indians of the Pueblo of Laguna and such other Pueblo Indians as the Secretary of the Interior may see fit to settle thereon, the following lands among others:

Township 10 North, Range 4 West, N.M.P.M. Section 13, lots 1, 2, 3, 4 and 5, S 1/2 SW 1/4 and SW 1/4 SE 1/4 Section 14, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 15, lots 1, 2, 3 and 4 and S 1/2 SE 1/4

Township 10 North, Range 5 West, N.M.P.M. Section 14, lots 5, 6 and 11 and SW 1/4 SW 1/4 Section 15, lots 5, 6, 7 and 8 and S 1/2 S 1/2 Section 16, lots 5, 6, 7 and 8 and S 1/2 S 1/2 Section 17, lots 5, 6, 7 and 8 and S 1/2 S 1/2 Section 18, lots 7, 8, 9, 10 and 11, SE 1/4 SW 1/4 and S 1/2 SE 1/4

Township 10 North, Range 6 West, N.M.P.M. Section 13, lots 2, 4, 6 and 8, S 1/2 S 1/2 Section 14, lots 2, 4, 6 and 8, S 1/2 S 1/2 Section 15, lots 2, 4, 6 and 8, S 1/2 S 1/2 Section 16, lots 2, 4, 6 and 8, S 1/2 S 1/2 Section 17, lots 5, 7, 8 and 9 and SE 1/4 SE 1/4

XXXVII. The United States owns the fee title to the lands described in the foregoing paragraph, which it holds in trust for the Indians of the Pueblo of Laguna, and is entitled to the exclusive possession of said lands.

24] The defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia are claiming some right, title or interest, apart from their rights as members

of the Laguna Pueblo, in and to the lands described in Paragraph XXXVI above adverse to the United States and the Pueblo of Laguna which constitutes a cloud upon the title of the United States as trustee to said lands.

Wherefore, the plaintiff prays that judgment be entered quieting the title of the United States to the lands described in Paragraph XXXVI above and adjudging that the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia have no right, title or interest to the said lands except such rights as they possess as members of the Pueblo of Laguna.

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25] Fifth Claim for Relief
(Individual Indian Allotments)

XXXIX. The NE 1/4, Section 20, Township 11 North, Range 3 West, N. M. P. M., has been allotted to Gurule Mexicana, an Indian. Trust patent No. 955415 issued to the allottee March 17, 1925, and the United States continues to hold said land in trust for said Indian.

XL. The SE 1/4, Section, Township 11 North, Range 3 West, N. M. P. M., has been allotted to Be chis ne pah, an Indian. Trust patent No. 955416 issued to the allottee on March 17, 1925. The allottee is now deceased and the United States continues to hold the land in trust for the Indian heirs of said allottee.

XLI. Lots 3, 4 and 5 and SE 1/4 SW 1/4 (SW 1/4) of Section 18, Township 10 North, Range 3 West, N.M.P.M., have been allotted to Charles Carr (Ze-na-lee), an Indian. Trust patent No. 900169 issued to the allottee March 21, 1923, and the United States continues to hold said land in trust for said allottee.

XLII. The United States is the owner as trustee of the allottees or their heirs and entitled to the exclusive possession of the lands described in paragraphs XXXIX, XL and XLI above.

XLIII. The defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia are claiming some right, title or interest in and to the lands described in paragraphs

XXXIX, XL abd XLI above adverse to the United States and its Indian wards, which constitutes a cloud upon the title of the United States as trustee to said lands.

Wherefore, Plaintiff prays that judgment be entered quieting the title of the United States to the lands described in paragraphs XXXIX, XL and XLI above and adjudging that defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia have no right, title or interest in or to said lands.

26]

Sixth Claim for Relief
(National Forest Lands)

XLIV. The following described lands, among others, have been reserved for and made a part of the Cibola National Forest in New Mexico:

Township 11 North, Range 7 West, N. M. P. M. Section 21, lots 1, 2, 3, 4 and 5 and N 1/2 Section 22, lot 5.

XLV. The United States is the owner of fee title and entitled to the exclusive possession of the lands in the Cibola National Forest described in the foregoing paragraph.

XLVI. The defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia are claiming some right, title or interest in or to the lands described in paragraph XLIV above adverse to the United States which constitutes a cloud upon the title of the United States to said lands.

Wherefore, the plaintiff prays that judgment be entered quieting its title to the lands described in paragraph XLIV above and adjudging the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia have no right, title or interest to said lands.

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Seventh Claim for Relief
(Public Domain)

XLVII. By virtue of the Treaty of Guadaloupe Hidalgo, 9 Stat. 922, the United States became the owner of all unappropriated lands within the area ceded to the United States

by that treaty, such lands coming a part of the public domain of the United States.

XLVIII. The United States is the owner and entitled to the exclusive possession of those public lands in Valencia County, New Mexico, described as follows:

27] Township 10 North, Range 3 West, N. M. P. M. Section 4, lots 1,2, 3, 4 and 5, S 1/2 NE 1/4, SE 1/4 NW 1/4, E 1/2 SW 1/4 and SE 1/4 Section 5, lot 1 Section 8, lots 1 and 2 and S 1/2 SE 1/4

Township 11 North, Range 3 West, N. M. P. M. Section 20, lots 1 and 2, N 1/2 NW 1/4, SE 1/4 NW 1/4, NE 1/4 SW 1/4 and SW 1/4 Section 30, lots 1, 2 and 3

Township 10 North, Range 7 West, N. M. P. M. Section 16, lots 11 and 12 Township 11 North, Range 7 West, N. M. P. M. Section 28, lots 5 (W 1/2 NW 1/4) and 6 W 1/2 SW 1/4)

XLIX. The defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia are claiming some right title or interest in and to the lands desci bed in paragraph XLVIII above adverse to the United States, which constitutes a cloud upon the title of the United States to said lands.

Wherefore, plaintiff prays that judgment be entered quieting the title of the United States to the lands described in paragraph XLVIII above and adjudging that the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia have no right, title, or interest in or to said lands.

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Eighth Claim for Relief
(Minerals reserved to the United States)

L. The plaintiff adopts by reference as a part of its eighth claim for relief, paragraphs I, II and XLVII from its first and seventh claims for relief.

LI. Stockraising homestead entries have been filed upon a part of the public domain in Valencia County, New Mexico, described as lots 10, 11, 12, 13 and 14, Section 4, and lots

1, 2, 3 and 4, Section 9, Township 10 North, Range 7 West, N. M. P. M., in which the coal and all other minerals were reserved to the United States pursuant to the Act of December 29, 1916, 39 Stat. 862. The United States is now the owner of all such reserved minerals with the right to prospect for and mine such minerals as provided by the Act of December 29, 1916, supra.

28] LII. The defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia are claiming some right, title or interest in and to the minerals reserved to the United States in the lands described in the foregoing paragraph adverse to the United States, which constitutes a cloud upon the title of the United States to said minerals.

Wherefore, Plaintiff prays that judgment be entered quieting title of the United States to all coal and other minerals underlying the lands described in paragraph LI above and adjudging that defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia have no right, title or interest in said minerals.

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29] Ninth Claim for Relief
(Request for Injunction)

LIII. The plaintiff adopts by reference as a part of its ninth claim for relief paragraphs I through LII from its first, second, third, fourth, fifth, sixth, seventh and eighth claims for relief.

LIV. The defendants, Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia, have heretofore on or about January 25, 1957, filed a complaint in the District Court of Valencia County, New Mexico, which appears in the records of that Court as Docket No. 8016, a copy of which is attached hereto as Exhibit A. There are named as defendants in said complaint John Herndon, Anaconda Copper Mining Company, a corporation, the Pueblo of Laguna, an Indian Pueblo, Clemente Lente, as Governor of the Pueblo of Laguna, and in his individual capacity, Willie Creager, as a Member of the Board of the Pueblo of Laguna, and in his individual capacity, Joe Ross, as a Member of the Board of the Pueblo of Laguna, and in his individual capacity, Joe Marmon, as a Member of the

Board of the Pueblo of Laguna, and in his individual capacity, and Lee Marmon, as a Member of the Board of the Pueblo of Laguna, and in his individual capacity. This action, hereinafter referred to as Docket No. 8016, is now pending in the District Court of Valencia County, New Mexico.

LV. In Docket No. 8016, the plaintiffs in that action seek a writ of ejectment against the defendants there named and a judgment against them in the amount of thirty-one million dollars ($31,000,000.00), being the value of minerals alleged to have been unlawfully extracted from the land. While the plaintiffs in Docket No. 8016 seek only a judgment for possession and damages, they allege in their complaint that they are the owners in fee under a private land grant of the land described in the complaint. The purpose and effect of the complaint in Docket No. 8016 is to challenge the title and possession of the United States and the Pueblo of Laguna in the lands from which plaintiffs in Docket No. 8016 seek to eject the defendants, which lands are as follows:

30] (a) The 51,578.19 acres, more or less, of the original Paguate Purchase to which the Pueblo of Laguna retained title as a result of the Pueblo Lands Board Report and the final decrees in Docket No. 2080 in this Court, which lands are more particularly described in paragraph XVI of plaintiff's first claim for relief herein, except Lot 6, Section 4, Township 10 North, Range 3 West and Lot 5, Section 33, Township 11 North, Range 3 West, N. M. P. M.

(b) The lands purchased by the Pueblo of Laguna, being:

1. The 2,174.332 acres, more or less, purchased from the Board of Trustees of the Cebolleta Land Grant as more particularly described in paragraph XXIII of plaintiff's second claim for relief herein, and being a portion of the lands awarded the owners of the Cebolleta Grant by the decree of this Court of July 20, 1931, in Docket No. 2080.

2. The 2,519.028 acres, more or less, purchased from Cruz Baca and wife, and more particularly described in paragraph XXV of plaintiff's second claim for relief herein, and being the identical lands awarded Cruz Baca and wife by the final decree of this Court of November 7, filed November 9, 1931, in Docket No. 2080.

3. The portion of the lands purchased from Cruz Baca and wife by deed dated July 31, 1939, lying in sections 21 and 22, Township 11 North, Range 6 West, N.M.P.M., which lands lie outside of the original Paguate Purchase, and are more particularly described in paragraph XXVII of plaintiff's second claim for relief.

(c) Lands outside the Paguate Purchase but within the El Rito, San Juan and Gigante Ranchos and more particularly described in paragraph XXXI of plaintiff's third claim for relief herein.

(d) The lands outside the Paguate Purchase reserved for the Pueblo of Laguna by Executive Orders 1221 and 2549, and more particularly described in paragraph XXXVI of plaintiff's fourth claim for relief.

31]. (e) The lands outside the Paguate Purchase allotted to individual Indians and held by the United States in trust for the individual allottees, or their heirs, as more particularly described in paragraphs XXXIX, XL and XLI of plaintiff's fifth claim for relief herein.

(f) The lands outside the Paguate Purchase in the Cibola National Forest and more particularly described in paragraph XLIV of plaintiff's sixth claim for relief herein.

(g) The lands outside the Paguate Purchase which remain a part of the public domain and are more particularly described in paragraph XLVIII of plaintiff's seventh claim for relief herein.

(h) The minerals reserved to the United States under those lands outside the Paguate Purchase described in paragraph LI of plaintiff's eighth claim for relief herein.

(i) Lands within the original Paguate Purchase which were awarded to the owners of the Cebolleta Grant and 72 private claimants by the decree of this Court of July 20, 1931, in Docket No. 2080, and which were not subsequently purchased by the Pueblo of Laguna, but excepting therefrom the following described lands;

Township 11 North, Range 5 West, N. M. P. M. Section 19,

Lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 20, Lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 21, Lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 22, Lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 23, Lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 24, Lots 1, 2, 3 and 4 and S 1/2 S 1/2

Township 11 North, Range 6 West, N. M. P. M. Section 23, Lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 24, Lots 1, 2, 3 and 4 and S 1/2 S 1/2

(j) A portion, but not all, of the lands in the Cubero Grant where it overlapped the Paguate Purchase and as to which the Pueblo Lands Board determined the owners of the Cubera Grant had a superior title, and also an area in the Cubera Grant immediately south of the original Paguate Purchase.

32] (k) Lands outside the Paguate Purchase which were included in the grant of lands to the Santa Fe Pacific Railroad Company, the grant of school lands to the State of New Mexico, private land grants, private claims, and small holding claims, or which were disposed of under the public land laws of the United States.

LVI. In Docket No. 8016, the plaintiffs seek to oust the United States from lands to which it has title and which are in the possession of either the United States or its Indian wards and from lands to which the Pueblo of Laguna has title and possession under the guardianship of the United States. The United States is an indispensable party to Docket No. 8016. It is not a party to Docket No. 8016 and it cannot be made a party to that action. The United States, by filing this action, has brought before this Court all interested parties so that all conflicting claims may be litigated in one action. Any judgment entered in this action will be binding upon the Pueblo of Laguna and its officers since they are represented by the United States, and all other parties in Docket No. 8016 are named as defendants in this action.

LVII. The United States is entitled to have the title to the property claimed by it in its own behalf and title to the property claimed in behalf of the Pueblo of Laguna quieted as against any claims made by the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia.

LVIII. The United States as owner of the legal title to the property or as guardian of the Indians of the Pueblo of Laguna, which is the legal owner of the property and being in possession thereof, does not have an adequate remedy at law.

LIX. The aforesaid action, Docket No. 8016, in the District Court of Valencia County, New Mexico, instituted by the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia against the Pueblo of Laguna and the members of its tribal counsel and against The Anaconda
33] Company (including its General Manager), mineral lessee of the Pueblo of Laguna, is an attempt by said defendants to wrest possession from the United States and its wards in an action in which the United States is not and cannot be made a party, to the permanent and irreparable injury and detriment of the United States and its Indian wards. The mere pendency of the state court action constitutes a threat against and an interference with the substantial rights of the United States, its wards, and their mineral lessee in the property.

LX. The Anaconda Company has prospected upon the lands of the Pueblo of Laguna covered by its prospecting permit and its mining lease and has discovered a very valuable deposit of uranium-bearing ore. The said Anaconda Company has proceeded under its mining lease to develop a mine known as the Jackpile mine, from which large amounts of uranium-bearing ore are being removed. Under the lease between the Pueblo of Laguna and The Anaconda Company, the Pueblo has received royalties of approximately $2,900,000.00.

LXI. Docket No. 8016 in the District Court of Valencia County, New Mexico, is a law action for ejectment and damages. In the event a writ of ejectment were to issue in that case, that Court would be without the power possessed by this Court in this equity action to enter a decree determining the rights of the parties to the lands and minerals involved and at the same time protecting the interests of the United States in the continued and uninterrupted production from the Jackpile mine needed in the national defense effort.

LXII. The Jackpile mine is one of the largest, if not the largest, uranium producing mine in the United States. The

Atomic Energy Commission has entered into a contract with The Anaconda Company under which the Company has built a plant near Bluewater, New Mexico, for processing uranium-bearing ores into concentrates which are sold and delivered to the Commission. Over ninety per cent (90%) of the concentrates being produced at the Anaconda plant under said contract are derived from ores mined from the Jackpile mine. The uranium concentrates which were delivered by The Anaconda Company to the Commission from said plant during the calendar year 1956 accounted for more than thirty per cent (30%) of receipts from all domestic sources during that period. The continued and uninterrupted production of uranium-bearing ore from the Jackpile mine is of great importance to the uranium procurement program of the Commission and to the national defense.

LXIII. The Anaconda Company (formerly the Anaconda Copper Mining Company) a corporation, and John Herndon, its General Manager, are interested in this action on the side of the plaintiff and will be affected by the decree to be entered herein.

LXIV. The plaintiffs in Docket No. 8016 are members of the Pueblo of Laguna and as such members have shared in the use of the tribal lands of the Pueblo which are the subject matter of that action. As a result of having accepted such benefits, the said plaintiffs, who are defendants herein, are estopped to deny the title of the Pueblo of Laguna to its lands.

LXV. The defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia have no right, title or interest in or to any of the lands described in paragraphs XVI, XXIII, XXV, XXVII, XXXI, XXXVI, XXXIX, XL, XLI, XLIV, XLVIII and LVIII above; neither the defendants nor their predecessors in interest have made any claim to the said lands, or any of them, adverse to the Pueblo of Laguna subsequent to the Treaty of Guadaloupe Hidalgo in the manner provided by Congress for asserting title to lands claimed under Spanish or Mexican land grants or otherwise; and said defendants are attempting in Docket No. 8016 in the District Court of Valencia County, New Mexico, to assert a stale claim which is barred by laches.

35] Wherefore, plaintiff prays that this Court enter an injunction permanently enjoining the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia, their agents, servants, employees and attorneys and all persons in active concert or participation with them from prosecuting or attempting to prosecute that certain action heretofore filed in the District Court of Valencia County, New Mexico, entitled Lupe Alonzo, et al., v. John Herndon, et al., No. 8016, in the records of said Court, insofar as said action relates to the lands and mineral rights described in paragraphs XVI, XXIII, XXV, XXVII, XXXI, XXXVI, XXXIX, XL, XLI, XLIV, XLVIII and LVIII above.

Plaintiff further prays that pending a final determination of this cause a preliminary injunction issue against the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia enjoining and restraining said defendants and each of them, their agents, servants, employees, attorneys and all persons in active concert or participation with them from prosecuting or attempting to prosecute the aforesaid action filed by the said defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia in the District Court of Valencia County, New Mexico, entitled Lupe Alonzo et al. v. John Herndon et al. No. 8016, in the records of said Court, insofar as said action relates to the lands and mineral rights described in paragraphs XVI, XXIII, XXV, XXVII, XXXI, XXXVI, XXXIX, XL, XLI, XLIV, XLVIII and LVIII above.

Plaintiff prays for such other and additional relief as may be just and proper.

Paul F. Larrazolo
United States Attorney

Filed Feb. 21, 1957.

36] Exhibit A.

In the District Court of the Second Judicial District in and for the County of Valencia, State of New Mexico. Case No. 8016.

Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia, Plaintiffs, vs. John Herndon, Anaconda Copper Mining Company, a corporation, the Pueblo Of Laguna, an Indian Pueblo, Clemente Lente, as Governor of the Pueblo of Laguna, and in his individual capacity, Willie Creager, as a Member of the Board of the Pueblo of Laguna, and in his individual capacity, Joe Ross, as a Member of the Board of the Pueblo of Laguna, and in his individual capacity, Joe Marmon, as a Member of the Board of the Pueblo of Laguna, and in his individual capacity, and Lee Marmon, as a Member of the Board of the Pueblo of Laguna, and in his individual The State Of New Mexico capacity, Defendants, John Herndon, Anaconda Copper Mining Company, Pueblo Of Laguna, Clemente Lente, Willie Creager, Joe Ross, Joe Marmon, Lee Marmon.

Defendant - Greeting:

You are hereby commanded to appear before the Second Judicial District Court of the State of New Mexico sitting within and for the County of Valencia that being the County in which the complaint herein is filed within thirty days after the service of this summons, then and there to answer the complaint of the above named Plaintiff in the above causes.

You are notified that unless you so appear and answer the Plaintiffs will apply to the Court for the relief demanded in the complaint together with the costs of suit.

Witness the Honorable John B. McManus, Jr.
District Judge of the Second Judicial District Court of the State of New Mexico, and the seal of the District Court of Valencia County this 25th day of January, 1957

(Court Seal) Marybel F. Seery Clerk

Endorsement

The number and style of this case is stated above

Alonzo vs. United States of America

A statement of the nature of the action in general terms is Ejectment Action and Suit for Damages as per copy of complaint hereto attached

Chavez, Ortega & Robins Attorneys for Plaintiff Office and Post Office Address 610 Sunshine Bldg. Albuquerque, New Mexico. Arnold, Fortas & Porter - 1229 19th St., N.W., Washington 25 D. C. R. F. D. Arledge & Charles Driscoll - 612 Sunshine Bldg., Albuquerque, N. M.

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37] In The District Court State Of New Mexico County Of Valencia Lupe Alonzo et al., Plaintiffs, -vs- John Herndon et al., defendants. No. 8016

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Complaint.

Come now the plaintiffs and state:

I. That at all times pertinent hereto the plaintiffs have been residents of the State of New Mexico in possession of and owners in fee of and entitled to the exclusive possession of that certain tract of land within the County of Valencia, State of New Mexico commonly known as El Rancho Paguati and more particularly described as follows, to-wit:

38] Township Ten (10) North, Range Three (3) West: Sections 5, 6, 7, 8, 9, 17 and 18 Township Ten (10) North, Range Four (4) West: Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 Township Ten (10) North, Range Five (5) West: Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 Township Ten (10) North, Range Six (6) West: Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 Township Ten (10) North,Range Seven (7) West: Sections 2, 3, 4, 9, 10 and 16 Township Eleven (11) North, Range Three (3) West: Sections 19, 20, 29, 30, 31 and 32 Township Eleven (11) North, Range Four (4) West: Sections 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 Township Eleven (11) North, Range Five (5) West: Sections 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 Township Eleven (11) North,Range Six (6) West: Sections 19, 20, 21, 22, 25, 26, 27, 28, 30, 32, 33, 34, 35 and 36 Township Eleven (11) North, Range Seven

(7) West: Sections 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35 and 36.

II. That on or about the 18th day of October, 1951, the defendant, the Pueblo of Laguna, and the defendant, the Anaconda Copper Mining Company, a corporation, entered into a purported mineral prospecting permit and option to lease and said defendants in conjunction with the defendants, John Herndon, as General Manager of the defendant, the Anaconda Copper Mining Company, and in his individual capacity, Clemente Lente, as Governor of the Pueblo of Laguna, and in his individual capacity, Willie Creager, as a member of the Board of the Pueblo of Laguna, and in his individual capacity, Joe Ross, as a member of the Board of the Pueblo of Laguna, and in his individual capacity, Joe Marmon, as a member of the Board of the Pueblo of Laguna, and in his individual capacity, and Lee Marmon, as a member of the Board of the Pueblo of Laguna, and in his individual capacity, have subsequent to that date performed acts on the land described in paragraph I above contrary to and in conflict with the interest of the plaintiffs by reason of the joint occupation and possession by all of the aforesaid defendants of the described lands concurrently with the plaintiffs, thereby denying plaintiffs the exclusive possession thereof.

39] III. That each of the defendants named in paragraph II above have individually and jointly engaged in extensive prospecting by core drilling on the land described in paragraph I above and have extracted and continue to extract from said land valuable minerals.

IV. That the value of the minerals wrongfully extracted from the lands of these plaintiffs by the said defendants as alleged in paragraph III above is, to-wit: Thirty One Million Dollars ($31,000,000.00).

V. That the defendant, John Herndon, General Manager of defendant, the Anaconda Copper Mining Company, subsequent to the 18th day of October 1951, moved upon the property described in this complaint and continues to live on the premises.

40] VI. That the tract of land owned by plaintiffs is non-Indian land and for many years has been owned in fee by the plaintiffs and plaintiffs' predecessors in interest.

VII. That the tract of land owned by the plaintiffs is a private land grant made to plaintiffs' predecessors in interest and was a completed grant severed from the public domain at the time the territory of New Mexico was ceded to the United States by the Republic of Mexico.

VIII. That the plaintiffs are entitled to a writ of ejectment against the defendants, and are entitled to damages against the defendants, John Herndon, the Anaconda Copper Mining Company, the Pueblo of Laguna, Clemente Lente, as Governor of the Pueblo of Laguna, Willie Creager, Joe Ross, Joe Marmon and Lee Marmon, as members of the Board of the Pueblo of Laguna, in the sum of Thirty One Million Dollars ($31,000,000.00)

IX. That the defendant, Anaconda Copper Mining Company, has since the 18th day of October 1951 changed its name to the Anaconda Company and is herein designated as the Anaconda Copper Mining Company, as its name appears in the said prospecting permit and option to lease.

Wherefore, plaintiffs pray for judgment against the defendants as follows:

1. For a writ in ejectment against the defendants and each of them.

2. For damages in the amount of Thirty One Million Dollars ($31,000,000.00) against the defendants, the Anaconda Copper Mining Company, John Herndon, the Pueblo of Laguna, Clemente Lente, as Governor of the Pueblo of Laguna, and in his individual capacity, Willie Creager, as a member of the Board of the Pueblo of Laguna, and in his individual capacity, Joe Ross, as a member of the Board of the Pueblo of Laguna, and in his indivudual capacity, Joe Marmon, as a member of the Board of the Pueblo of Laguna, and in his individual capacity, and Lee Marmon, as a member of the Board of the Pueblo of Laguna, and in his individual capacity.

41]

Attorneys For Plaintiffs:
Lorenzo A. Chavez
Arturo G. Ortega
Melvin L. Robins
By Lorenzo A. Chavez

Alonzo vs. United States of America

Arnold, Fortas & Porter
By Walbro Hansler (approximate)
R. F. Deacon Arledge
Charles Driscoll
By R. F. Deacon Arledge

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42] Motion Of The United States For Preliminary Injunction.

The United States of America by Paul F. Larrazolo, United States Attorney for the District of New Mexico, acting under authority of the Attorney General, moves the Court to grant a preliminary injunction herein restraining the defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia and all persons in active concert or participation with them, from prosecuting or attempting to prosecute, pending the final determination of this action and until the further order of this Court, that certain action filed by Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia in the District Court of Valencia County, New Mexico, entitled Lupe Alonzo, et al., v. John Herndon, et al., No. 8016, in the records of said Court.

Albuquerque, New Mexico, February 21, 1957.

Paul F. Larrazolo
United States Attorney

Filed Feb. 21, 1957.

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43] Order To Show Cause.

The plaintiff, United States of America, by Paul F. Larrazolo, United States Attorney for the District of New Mexico, in the above-entitled cause, having commenced an action in the United States District Court for the District of New Mexico against the above-named defendants, Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo, James Garcia, John Herndon and The Anaconda Company (formerly Anaconda Copper Mining Company), a corporation, and all persons in active concert or participation with said defendants, and the said above-named plaintiff having filed herein a

motion for a preliminary injunction directed against the said above-named defendants and all persons in active concert or participation with them, moving the Court to grant a preliminary injunction herein restraining the above said named defendants and all persons in active concert or participation with them, from prosecuting or attempting to prosecute, pending the final determination of the action filed herein by the plaintiff, United States of America, and until the further order of this Court, that certain action filed by Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia in the District Court of Valencia County, New Mexico, entitled Lupe Alonzo, et al., v. John Herndon, et al., No. 8016, in the records of said Court, on reading the Complaint and Motion filed in this cause by the plaintiff, United States of America, and it satisfactorily appearing to the Court therefrom that it is probable that a preliminary injunction pending the final determination of the action filed herein by the United States of America should issue.

44] And it further appearing from the allegations made in said Complaint and in said Motion by the plaintiff, United States of America, that it is probable that said defendants and all persons in active concert or participation with them should be temporarily enjoined from the prosecution of that certain action filed by Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia in the District Court of Valencia County, New Mexico, entitled Lupe Alonzo, et al., v. John Herndon, et al., No. 8016, in the records of said Court, pending the final determination of the action filed in the United States District Court for the District of New Mexico by the plaintiff, United States of America, now therefore,

It Is Hereby Ordered that the defendants, Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo, James Garcia, John Herndon and The Anaconda Company (formerly Anaconda Copper Mining Company), a corporation, be, and they are hereby cited to appear before this Court on the 12th day of March, 1957, at 9:30 o'clock A.M., of said date in the courtroom for the United States District Court for the District of New Mexico, in the Federal Building, in the City of Albuquerque, County of Bernalillo, State of New Mexico, then and there to show cause, if any they have, why a preliminary injunction pending the final determination of this cause filed in the United States District Court for the District of New Mexico

should not issue preliminarily enjoining the said above-named defendants, and all persons in active concert or participation with them, from prosecuting or attempting to prosecute that certain action filed by Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia in the District Court of Valencia County, New Mexico, entitled Lupe Alonzo, et al., v. John Herndon, et al., No. 8016, in the records of said Court.

45] Dated this 21st day of February, 1957.

Waldo H. Rogers
United States District Judge

Filed Feb. 21, 1957.

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[A notice to defendants of an application for preliminary injunction was filed February 21, 1957.]

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48] First Amended Complaint.

Comes now the United States of America, in its own behalf and in behalf of the Pueblo of Laguna, by Paul F. Larrazolo, United States Attorney for the District of New Mexico, acting under authority of the Attorney General and at the request of the Secretary of the Interior, and hereby amends its Complaint filed herein in the following respects:

I. The plaintiff adopts all of the allegations contained in the original Complaint filed herein, but makes the following amendments:

(a) At page 11 of plaintiff's Complaint, Paragraph XVIII, line 9, the letters "LXV" are hereby amended and changed to "XVI".

(b) At page 11, Paragraph XVIII, last line, the name "Herdon" is hereby amended and changed to "Herndon".

(c) At page 23 the number of the paragraph was not shown at the top of said page and the paragraph number "XXXVIII" is hereby inserted on said paragraph.

(d) At page 24, Paragraph XL, line 1, the said paragraph is hereby changed and amended to show the figure "20" immediately following the word "Section".

Paul F. Larrazolo
United States Attorney

Filed Feb. 25, 1957.

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49] Affidavit In Response To Order To Show Cause.

State Of New York County Of New York ss.:

J. B. Knaebel, being duly sworn, deposes and says:

1. I am Assistant to the Vice President In Charge of Mining Operations of The Anaconda Company, one of the defendants herein, and my office is at 25 Broadway, New York 4, New York. From January 1951 to July 1956, I was Manager of Anaconda's New Mexico Operations, with headquarters at Grants, New Mexico. I am personally familiar with the facts set forth in this affidavit which is submitted in response to the motion herein by the plaintiff for a preliminary injunction restraining further prosecution of case No. 8016 now pending in the District Court of the Second Judicial District, County of Valencia, State of New Mexico, entitled Lupe Alonzo, et al., v. John Herndon, et al.

2. In the State court action, plaintiffs seek a "Writ in Ejectment" ousting Anaconda and the other defendants, including the Pueblo of Laguna, from lands which the Pueblo has held and occupied for many years and on which Anaconda has been mining and exploring for uranium ores for over five years under a lease and permit (as supplemented and amended) from the Pueblo of Laguna, approved by the United States, and without notice of those plaintiffs' claims prior to the commencement of their State court action in January 1957.

50] 3. The most important consideration now is for a prompt and final adjudication of the question of title in order to minimize the interference caused by this controversy with the development and mining of the uranium ores

vital to the national defense of the United States. I am informed that this can only be accomplished in this action, in which all the parties necessary have been joined, whereas continued prosecution of the State court proceeding, in the absence of the United States as a party, could be wholly inconclusive; there is no good reason for two litigations, one in the State court and one in the federal court, where one, in the federal court, will suffice.

4. In October 1951 the Pueblo of Laguna, with the approval of the United States, through the Department of Interior, granted Anaconda a permit to prospect for uranium and other minerals associated therewith on lands owned by the Pueblo, including the lands within the area known as the "Paguate Purchase" referred to in plaintiff's first claim for relief herein. This permit was negotiated with the Laguna Tribal Council and representatives of the United States Bureau of Indian Affairs. In addition to the Paguate Purchase lands, the prospecting permit covers portions of the lands described in the second, third and fourth claims for relief in the Government's complaint.

51] The permit provides that the Pueblo would grant Anaconda a mining lease on lands covered by the permit where Anaconda's "examinations and tests convince it there is a possibility or probability of developing a commercial mine." Pursuant to this provision, on March 27, 1952, the Pueblo of Laguna granted Anaconda a mining lease for the "Jackpile mine" located in the Paguate Purchase area. (The complaint, paragraph XVIII, describes the property subject to this original lease, but omits additional lands added to the lease by supplementary lease agreements of September 21, 1954 and November 8, 1956 - the lease now covers approximately 3,680 acres located in Sections 1, 2 and the East half of Section 3 of Township 10 North, Range 5 West and Sections 35, 36, the East half of Section 34, the South half of Section 26, and the Southeast one-quarter of Section 27 of Township 11 North, Range 5 West - all of which lands are claimed by plaintiffs in the State court action.) This lease continues or is renewable by Anaconda so long as the Company conducts mining operations on the property and pays the stipulated royalties to the Pueblo of Laguna on ores it mines. Royalty payments to December 31, 1956 total approximately $2,900,000.00.

5. In addition to royalty payments, Anaconda has incurred total expenditures for general development of lands held under the prospecting permit amounting to $1,484,847.19 as of December 31, 1956. To December 31, 1956, $6,824,853.59 has been expended by Anaconda for Contract and Company mine stripping of waste rock from the Jackpile Area. Some 24,758,394 tons have been so removed. Ore extraction
52] from Laguna Tribal Lands began in early 1953. To December 31, 1956, 1,050,482.22 dry tons have been so removed and delivered to Bluewater plantsite for treatment, 98.8% of which has come from the Jackpile mine with the balance from smaller isolated ore deposits elsewhere on the Laguna Reservation.

6. The uranium ores of the Jackpile mine are treated at Anaconda's Bluewater processing plant, about fifty miles from the Jackpile mine. This plant is now the largest of the twelve in operation in the United States, with about one-third of the total U.S. processing capacity. See Twenty-first Semiannual Report of the Atomic Energy Commission, p. 4 (January 1957). Initially, Anaconda's contract with the Atomic Energy Commission dated December 27, 1951 called for the construction by Anaconda of a limestone uranium ore treatment plant having a capacity of 200 tons per day. As the magnitude of the Jackpile ore body became known, this contract was amended to increase the daily capacity to 400 tons of ore for the treatment of sandstone uranium ores by the acid leach method and subsequently amended for increasing the plant so that, during 1956, it treated 2,800 tons of ore per day. About 90% of the ores processed at the Bluewater plant are from the Jackpile mine, which is Anaconda's largest uranium mine. To December 31, 1956, Anaconda has spent $26,069,000 for mine and plant facilities and equipment. Of this total $3,534,500 has been expended at the Jackpile mine to provide shops, housing facilities, railway haulage spur, ore crushing installations, and heavy equipment. The balance or $22,534,000 has been expended at Bluewater and in the town of Grants, New Mexico.

53] 7. Uranium ore bodies are extremely elusive, and difficult to find, and the search for them requires a great deal of time, painstaking effort, equipment, competent supervision, technical direction and expenditures of large sums of money.

8. Development work to increase production on existing ore bodies, such as the Jackpile mine, involves similar problems and considerations. Obviously, the belated claims advanced by plaintiffs in the State court action pose a serious problem with respect to the making of capital investments and the carrying out of projects planned by Anaconda before the commencement of the State court action -- estimated to cost about $1,200,000. Additionally, these claims present serious problems in making essential long-range plans and allocations of the Company's resources among the various projects in which it is involved or has under consideration. For these reasons, any delay in the resolution of this controversy may interfere with exploration and development work and consequently result in a smaller output of ores than could otherwise be anticipated.

9. The importance of the problem is further demonstrated by the fact that Anaconda has over 900 employees engaged in its mining and exploring operations on the lands in controversy and at its milling operations at Bluewater. These employees include approximately 265 Laguna Indians, over 200 of whom are employed at the Jackpile mine. The current annual wages of these Indians total about $1,500,000. Wage payments to the Indians by Anaconda have thus far totalled over $2,500,000, of which approximately $1,000,000 was paid in 1956. These employees all required training by Anaconda in order to qualify for the work. The reconstruction of this force of qualified employees, once it was dispersed as the result of any interruption of operations, would be a difficult and time-consuming task. In addition, any interruption of operations would result in the loss of highly trained technicians employed by Anaconda in its operations on the lands in controversy and at the Bluewater plant.

54] 10. In view of all these circumstances, it is of great importance to Anaconda that the present controversy be litigated in a single litigation in which all interested parties are joined, including the United States, in this Court.

Wherefore, I respectfully submit that the motion for a preliminary injunction should be granted.

J. B. Knaebel

Sworn to before me this 7th day of March, 1957.

John Browning
Notary Public State of New York
No. 24-0462000

Filed March 12, 1957.

Alonzo vs. United States of America

56] Preliminary Injunction.

This cause having come on for hearing on the twelfth day of March, 1957, on motion of the plaintiff for a preliminary injunction herein and a show cause order issued by this Court against Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo, James Garcia, The Anaconda Company and John Herndon, and the Court having orally entered herein findings of fact and conclusions of law;

It Is Ordered that a preliminary injunction be, and it is hereby, granted to the plaintiff, the United States of America, and the defendants herein, Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo, James Garcia, The Anaconda Company, and John Herndon, and all persons in active concert or participation with them are restrained, pending the final determination of this action and until the further order of this Court, from prosecuting or attempting to prosecute that certain action filed by said defendants Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia in the District Court of the County of Valencia, State of New Mexico, entitled Lupe Alonzo et al. v. John Herndon et al., No. 8016, in the records of said Court insofar as that action affects the lands claimed by the United States for the Pueblo of Laguna, which lands are more particularly described as follows:

57] Township 10 North, Range 3 West, N.M.P.M. Section 4, lot 6 Section 5, lots 2, 3, 4 and 5, W 1/2 E 1/2 and W 1/2 Section 6, all Section 7, all Section 8, lots 4, 5, 6 and 7, W 1/2 NE 1/4, W 1/2, NW 1/4 SE 1/4 Section 9, lots 6 and 7 Section 17, lots 6, 7 and 8 and NW 1/4 NW 1/4 Section 18, lots 6, 7, 8 and 9 and N 1/2 N 1/2

Township 11 North, Range 3 West, N.M.P.M. Section 19, lots 8, 9, 10, 11 and 12 and S 1/2 SW 1/4 Section 20, lot 3 Section 29, lot 3 Section 30, lots 4, 5, 6, 7 and 8, SW 1/4 NE 1/4, NW 1/4 SE 1/4 and W 1/2 Section 31, lots 3, 4 and 5, NW 1/4 and S 1/2 Section 32, lots 5, 6, 7 and 8 and SW 1/4 SW 1/4 Section 33, lot 5.

Township 10 North, Range 4 West, N.M.P.M. Sections 1 through 12, all Section 13, lots 6, 7, 8 and 9 and N 1/2 Section 14, lots 5, 6, 7 and 8 and N 1/2 Section 15, lots 5, 6, 7 and 9 and N 1/2 Section 16, lots 1, 3, 5 and 7 and N 1/2

Section 17, lots 1, 3, 5 and 7 and N 1/2 Section 18, lots 1, 2, 3, 5, 7 and 9 and NE 1/4 and E 1/2 NW 1/4

58] Township 11 North, Range 4 West, N.M.P.M. Section 19, lots 1, 2, 3, 4 and 5 and SE 1/4 SW 1/4 and S 1/2 SE 1/4 Section 20, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 21, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 22, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 23, lots 6, 7, 8 and 9 and S 1/2 S 1/2 Section 24, lots 5, 6, 7 and 8 and S 1/2 S 1/2 Sections 25 through 36, all

Township 10 North, Range 5 West, N.M.P.M. Sections 1 through 12, all Section 13, lots 1, 2, 3 and 4 and N 1/2 Section 14, lots 1, 2, 3 and 4 and N 1/2 Section 15, lots 1, 2, 3 and 4 and N 1/2 Section 16, lots 1, 2, 3 and 4 and N 1/2 Section 17, lots 1, 2, 3 and 4 and N 1/2 Section 18, lots 1, 2, 3, 4, 5 and 6 and NE 1/4, E 1/2 NW 1/4

Township 11 North, Range 5 West, N.M.P.M. Section 19, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 20, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 21, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 22, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 23, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 24, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Sections 25 through 36, all

59] Township 10 North, Range 6 West, N.M.P.M. Sections 1 through 4, all Section 5, lots 1, 2, 3, 4, 5 and 6, SE 1/4 NE 1/4, SE 1/4 SW 1/4 and SE 1/4 Section 7, lots 1 and 2 Section 8, lots 1, 2, 3 and 4, E 1/2 and E 1/2 W 1/2 Sections 9 through 12, all Section 13, lots 1, 3, 5 and 7 and N 1/2 Section 14, lots 1, 3, 5 and 7 and N 1/2 Section 15, lots 1, 3, 5 and 7 and N 1/2 Section 16, lots 1, 3, 5 and 7 and N 1/2 Section 17, lots 1, 2, 3, 4 and 6

Township 11 North, Range 6 West, N.M.P.M. Section 19, lots 1, 2, 3 and 4 and SW 1/4 SW 1/4 Section 20, lots 1, 2, 3 and 4 Section 21, lots 1, 2, 3, 4 and 5, SE 1/4 SW 1/4 and S 1/2 SE 1/4 Section 22, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 23, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 24, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Sections 25 through 27, all Section 28, lots 1, 2, 3 and 4, E 1/2, SE 1/4 NW 1/4 and E 1/2 SW 1/4 Section 32, lots 1 and 2 Section 33, lots 1 and 2, NE 1/4, E 1/2 NW 1/4 and S 1/2 Sections 34 through 36, all

60] Township 10 North, Range 7 West, N.M.P.M. Section 2, lots 1, 2 and 3 and NW 1/4 NW 1/4 Section 3, lots 1 and 2, N 1/2, SW 1/4 and W 1/2 SE 1/4 Section 4, lots 6, 7, 8 and 9, E 1/2 and E 1/2 NW 1/4 Section 9, lots 5, 6, 7 and 8 and E 1/2 NE 1/4 Section 10, lots 1, 2 and 3, NE 1/4 NW 1/4 and W 1/2 NW 1/4 Section 16, lots 8, 9 and 10

Township 11 North, Range 7 West, N.M.P.M. Section 21, lots 6, 7, 8, 9 and 10, SE 1/4 SW 1/4 and S 1/2 SE 1/4 Section 22, lots 5, 6, 7 and 8 and S 1/2 S 1/2 Section 23, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 24, lots 1, 2, 3 and 4 and S 1/2 S 1/2 Section 25, lots 1, 2, 3, 4, 5, 6 and 7, NE 1/4 NE 1/4 and NW 1/4 NW 1/4 Section 26, all Section 27, all Section 28, lots 5 (NW 1/4 NW 1/4), 6 (SW 1/4 NW 1/4), 7 and 8, E 1/2 and E 1/2 W 1/2 Section 33, lots 5, 6, 7 and 8, E 1/2 and E 1/2 W 1/2 Section 34, all Section 35, lots 1, 2 and 3, NE 1/4 NE 1/4, W 1/2 NE 1/4, NW 1/4, N 1/2 SW 1/4 and SW 1/4 SW 1/4 Section 36, lots 1 and 2

There are excepted from the above described lands the lands awarded by the decrees in Docket No. 2080 to the owners of the Baca Grant, described more particularly hereinafter as the lands purchased from Cruz Baca and wife by deed dated December 9, 1936, and the lands awarded the owners of the Cebolleta Grant, described as follows:

61] Beginning at a point on the boundary line between the Cebolleta Grant and the Paguate Purchase as surveyed by F. E. Joy, U. S. Surveyor in 1917, said point being 40 chains East of the closing corner between Secs. 22 & 23, T. 11 N. R. 4 W., thence S. through the center of fractional Sec. 23, 38.62 chains to the quarter section corner between Sections 23 and 26 of said Township and Range; thence S. 40 chains to the center of Sec. 26; thence W. 39.92 chains to the quarter section corner between Secs. 26 and 27; thence S. 0. degrees 1' E., along the line between Secs. 26 and 27, 40.00 chains to the corner of Secs. 26, 27, 34 and 35; thence S. 89 degrees 55' W., 40.03 chains to the quarter section corner between Secs. 27 and 34; thence S. 40 chains to the quarter section corner between Secs. 33 and 34; thence W. 40.02 chains to the center of Sec. 33; thence N. 40 chains to the quarter section corner between Secs. 28 and 33; thence S. 89 degrees 58' W., 40.04 chains to the corner of Secs. 28, 29, 32 and 33; thence N. 0 degrees 03' W., 40 chains to

the quarter section corner between Secs. 28 and 29; thence W. 79.93 chains to the quarter corner between Secs. 29 and 30; thence S. 89 degrees 53' W., 80.06 chains to the quarter section corner between Secs. 25 and 30 on the line between ranges 4 and 5 W., T. 11 N.; thence entering T. 11 N. R. 5 W., and running W. through the center of Secs. 25, 26, 27 and 28, three and one-half miles to the center of Sec. 28, T. 11 N. R. 5 W; thence N. 40 chains to the quarter section corner between Secs. 21 and 28; thence W. between Secs. 21 and 28, 20 and 29, and between Secs. 19 and 30, two and one-half miles to the corner of Secs. 19, 24, 25 and 30, on the line between ranges 5 and 6 W., T. 11 N.; thence entering T. 11 N. R. 6 W., and continuing west along the line between Secs. 24 and 25, 79.96 chains to the corner of Secs. 23, 24, 25 and 26; thence S. 40 chains along the line between Secs. 25 and 26 to the quarter section corner between Secs. 25 and 26; thence W. through the center of Secs. 26, 27, 28 and fractional Sec. 29 to the intersection of the E and W. center line of said Sec. 29 with the Easterly boundary of the Cubero Grant; thence continuing Westerly across the Cubero Grant, through unsurveyed fractional Secs. 29 and 30 tangent to the quarter section corner on the East line of Sec. 25, T. 11 N. R. 7 W.; thence entering said T. 11 N. R. 7 W., and running Westerly along the E and W center line of said Sec. 25, projected across the Cubero Grant, and continuing along the E and W center line of Secs. 26 and 27 to a point on said center line in Sec. 27 due South from the southwest corner of the Cebolleta Grant; thence North across the NW 1/4 of Sec. 27 and continuing North across the SE 1/4 SW 1/4 and Lot 7 of Sec. 22 to the Southwest corner of said Cebolleta Grant; thence Easterly along that certain line defined by the Joy Survey as the South Boundary of the Cebolleta Grant, 1531.02 chains, more or less, to the place of beginning;

Lands Purchased by the Pueblo of Laguna
from the Board of Trustees of the
Cebolleta Land Grant

Beginning at the northeast corner of this tract, which is at the point of intersection of the north boundary of the Cubero Grant and the south Boundary of the Cebolleta Grant; thence with the north boundary of said Cubero Grant

S. 85° 24' W., 10.58 chains to angle point 1 of this tract and angle point 5 on the north boundary of the Cubero Grant; thence S. 6° 41' W., 25.20 chains to angle point 2 of this tract and the 2 mile corner on the north boundary of the
63] Cubero Grant; thence S. 5° 55' W., 9.83 chains to angle point 3 of this tract and angle point 6 on the north boundary of the Cubero Grant; thence S. 10° 38' E., at 9.50 chains intersect the line between Secs. 19 and 30, T. 11 N., R. 6 W., at 20.03 chains angle point 4 of this tract and angle point 7 on the north boundary of the Cubero Grant; thence S. 27° 34' W., 18.80 chains, angle point 5 of this tract and angle point 8 on the north boundary of the Cubero Grant; thence S. 45° 22' W., 10.00 chains, angle point 6 of this tract and angle point 9 on the north boundary of the Cubero Grant; thence S. 78° 24' W., 20.84 chains, angle point 7 of this tract and the 3 mile corner on the north boundary of the Cubero Grant; thence S. 78° 23' W., at 8.23 chains intersect the east and west center line of Sec. 30, T. 11 N., R. 6 W., which point is designated as angle point 8 of this tract, from which angle point 10 on the north boundary of the Cubero Grant bears S. 78° 23' W., 0.70 chains distant; thence West along the east and west center line of said Sec. 30, at 6.42 chains the 1/4 section corner between Secs. 25 and 30 on the west boundary of T. 11 N., R. 6 W.; thence West along the east and west center line of Sec. 25 of T. 11 N., R. 7 W., at 18.49 chains intersect the north boundary of the Cubero Grant, which point is designated as angle point No. 9; thence N. 31° 50' W., along the north boundary of the Cubero Grant, at 20.95 chains angle point 10 of this tract and the 4 mile corner on the north boundary of the Cubero Grant; thence N. 31° 57' W., 10.05 chains, angle point 11 of this tract and angle point 13 on the north boundary of the Cubero Grant; thence N. 64° 43' W., 5.00 chains, angle point 12 of this tract and angle point 14 on the north boundary of the Cubero Grant; thence S. 68° 23' W., 14.97 chains to angle point 13 of this tract and angle point 15 on the north boundary of the Cubero Grant; thence S. 7° 39' W., at 23.23 chains intersect the east and west center line of said Sec. 25, which point is designated as angle point 14 of this tract,
64] from which point angle point 16 on the north boundary of the Cubero Grant bears S.7° 39' W., 6.77 chains distant; thence West along the east and west center line of said Sec. 25, at 23.56 chains the 1/4 section corner between Secs. 25 and 26; thence West along the east and west center line of Sec. 26, at 39.925 chains the center 1/4 section corner of said Sec. 26 and at 79.85 chains the 1/4 section corner between Secs. 26 and 27; thence West along the east and west center line of Sec. 27,

at 39.92 chains the center 1/4 section corner of Sec. 27, and at 56.34 chains the southwest corner of this tract; thence North, at 40.15 chains intersect the line between Secs. 22 and 27 at a point from which the corner of Secs. 21, 22, 27, and 28 bears N. 89° 56' W., 33.47 chains distant, and at 86.73 chains the southwest corner of the Cebolleta Grant, which point is the northwest corner of this tract; thence S. 89° 38' E., along the south boundary of said grant 155.68 chains to the 2 mile corner on said south boundary of the Cebolleta Grant; thence S. 89° 43' E., 75.48 chains to the 3 mile corner on the said south boundary of the Cebolleta Grant; thence S. 89° 39' E., 46.47 chains to the northeast corner of this tract, the point of beginning, containing 2,174.332 acres.

65] Lands Purchased by the Pueblo of Laguna from Cruz Baca and Wife by Deed dated December 9, 1936

A tract of land in Valencia County, New Mexico, within the exterior boundaries of the Baltazar Baca and Sons Grant, and within the exterior boundaries of the tract known as "Paguate Purchase" of the Laguna Indian Pueblo, which is described as follows:

Beginning at the quarter section corner between Sections 4 and 9 in Township 10 North, Range 6 West, N.M.P.M.;

Thence S. 89° 58' W., 39.87 chains to the corner of Sections 4, 5, 8 and 9 of said Township and Range;

Thence S. 89° 57' W., along line between Secs. 5 and 8, 31.87 chains to point of intersection with the west boundary of the Baltazar Baca Grant, as surveyed by Pradt and Watts in 1878, and as shown upon the plat approved by the U. S. Surveyor General for New Mexico, on November 30, 1878, said plat being on file in the U. S. Public Survey Office at Santa Fe, New Mexico;

Thence along said west boundary N. 0° 3' E., 23.52 chains to angle point No. 23;

Thence N. 0° 7' E., 28.37 chains to the divide between Encinal and Cubero;

Thence along said divide N. 27° 30' E., 2.58 chains;

Thence N. 51° 45' W., 12.85 chains;

Thence N. 34° 00' E., 13.24 chains;

Thence N. 40° 30' E., 20.85 chains;

Thence N. 6° 30' E., 23.32 chains to a point on the east boundary of the Cubero Grant as originally surveyed by George H. Pradt in 1896 and resurveyed by Basil C. Perkins in 1917; the plats of said surveys being on file in the U. S. Public Survey Office at Santa Fe, New Mexico;

66] Thence along said east boundary of the Cubero Grant, N. 49° 11' E., 5.42 chains to the 7 mile corner on said Cubero Grant boundary;

Thence N. 49° 17' E., 11.03 chains to angle point No. 29;

Thence N. 28° 00' E., 44.93 chains to angle point No. 30;

Thence N. 29° 48' W., 10.00 chains to angle point No. 31;

Thence N. 1° 41' W., 14.00 chains to the 8 mile corner;

Thence N. 1° 45' W., 16 chains to angle point No. 32;

Thence N. 21° 12' E., 31.71 chains to angle point No. 33;

Thence N. 31° 23' W., 7.35 chains to angle point No. 34;

Thence N. 37° 00' W., 3.96 chains to the Northeast corner of the Cubero Grant;

Thence N. 57° 12' W., 25.57 chains to angle point No. 1 on the North Boundary of the said Cubero Grant;

Thence N. 75° 45' W., 26.36 chains to angle point No. 2;

Thence N. 85° 07' W., 1.54 chains to point on West boundary of the Baltazar Baca Grant;

Thence along said boundary N. 0° 24' E., 1.90 chains to the four mile corner on West Boundary of said Baltazar Baca Grant;

Thence N. 20.43 chains to a point on the South
67] Boundary of Cebolleta Grant and North Boundary of the Paguate Purchase Grant as originally surveyed by Sawyer and McBroom in 1876 and as resurveyed by Lee Scott in 1908 and by B. C. Perkins in 1917, the plat of said survey being on file in the U. S. Public Survey Office at Santa Fe, New Mexico;

Thence along said boundary S. 89° 44' E., 44.88 chains to the five mile corner on said Boundary;

Thence S. 89° 41' E., 39.57 chains to the 5 1/2 mile corner on said boundary;

Thence S. 89° 34' E., 54.66 chains to a point on the East Boundary of said Baltazar Baca Grant;

Thence South along East Boundary of said Baltazar Baca Grant, 6.20 chains to the 6 mile corner of said Grant Boundary;

Thence S. 0° 10' W. 20 chains to angle point No. 3;

Thence S. 27° 10' W. 52.08 chains to angle point No. 4;

Thence S. 48° 23' E. 14.97 chains to angle point No. 5;

Thence S. 19° 10' W., 16.02 chains to angle point No. 6;

Thence S. 21° 21' E., 26.97 chains to angle point No. 7;

Thence S. 27° 08' W., 15.02 chains to angle point No. 8;

Thence S. 50° 05' W., 9.02 chains to angle point No. 9;

Thence S. 3° 49' E., 6 chains to angle point No. 10, leaving Grant Boundary at this point;

68] Thence S. 32° 48' W., 13.12 chains to angle point No. 11;

Thence S. 24° 07' W., 15.80 chains to angle point No. 12;

Thence S. 20° 46' E., 1.57 chains to angle point No. 12 1/2;

Thence S. 63° 15' E., 1.49 chains to angle point No. 13;

Thence S. 0° 6' W., 12.02 chains to angle point No. 14;

Thence S. 37° 58' W., 3.20 chains to angle point No. 15;

Thence S. 51° 23' W., 3.36 chains to angle point No. 16;

Thence N. 71° 54' W., 3.84 chains to angle point No. 17;

Thence S. 2°32' W., 19.84 chains to angle point No. 18;

Thence S. 44° 35' E., 9.16 chains to angle point No. 19;

Thence S. 44° 39' W., 35.02 chains to angle point No. 20;

Thence S. 9° 28' W., 41.26 chains to the place of beginning, containing Two Thousand Five Hundred Nineteen and Twenty-eight thousandths (2,519.028) acres.

Lands Purchased by the Pueblo of Laguna
From Cruz Baca and Wife by Deed dated
July 31, 1939

Township 11 North, Range 6 West, N.M.P.M. Section 21, NE 1/4 Section 22, N 1/2

69] El Rito, San Juan and Gigante Rancho Lands

Township 10 North, Range 4 West, N.M.P.M. Section 15, lots 8, 10 and 11 Section 16, lots 2, 4, 6 and 8 and S 1/2 S 1/2 Section 17, lots 2, 4, 6 and 8 and S 1/2 S 1/2 Section 18, lots 4, 6, 8, 10 and 11, SE 1/4 SW 1/4 and S 1/2 SE 1/4

Township 10 North, Range 5 West, N.M.P.M. Section 13, lots 5, 6, 7 and 8 and S 1/2 S 1/2 Section 14, lots 7, 8, 9 and 10 and S 1/2 SE 1/4

Dated at Albuquerque, New Mexico, this 14th day of March, 1957.

Waldo H. Rogers
United States District Judge

L.A.C. C.D. R.S.F. B.G.J.

Filed March 14, 1957.

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70] Notice Of Appeal.

To: Hon. Paul F. Larrazolo Attorney for Plaintiff
Iden & Johnson Attorneys for Co-Defendant

Notice is hereby given that Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo, James Garcia and John Herndon, defendants herein, hereby appeal to the United States Court of Appeals for the Tenth Circuit from the Order of the Court entered on the 13th day of March 1957 and the Preliminary Injunction entered on the 14th day of March 1957, which enjoined the proceedings in Cause No. 8016 in the District Court of Valencia County, New Mexico.

R. F. Deacon Arledge
Of Counsel for Defendants

Filed March 21, 1957.

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71] Amended Notice Of Appeal.

To: Hon. Paul F. Larrazolo U. S. Attorney for the District of New Mexico Attorney for Plaintiff, Iden and Johnson Attorneys for John Herndon and the Anaconda Company, Co-Defendants

Notice is hereby given that Lupe Alonzo, Jim Alonzo, Joe Alonzo and Valentino Alonzo, defendants herein, hereby appeal to the United States Court of Appeals for the 10th Circuit from the order of the Court entered on the 13th day of March 1957, and the preliminary injunction entered on the 14th day of March 1957 in this cause, which order and preliminary injunction enjoined these defendants from proceeding in cause No. 8016 in the District Court of Valencia County, New Mexico.

72] Attorneys for Defendants:
Lorenzo A. Chavez
Arturo G. Ortega
Melvin L. Robins
Arnold, Fortas & Porter
R. F. Deacon Arledge
Charles Driscoll
By R. F. Deacon Arledge

Filed March 22, 1957.

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[An appeal bond was filed March 22, 1957.]

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Transcript Of Proceedings

Be It Remembered that the above-entitled cause came on for Hearing before The Honorable Waldo H. Rogers, U. S. District Judge, at Albuquerque, New Mexico, on an Order to Show Cause, on the 12th day of March, 1957, at 9:30 o'clock, A. M.; * * * * *

Mr. Larrazolo: The Plaintiff is ready.

The Court: What say the Defendants?

Mr. Chavez: The Defendants are ready, with this note of

explanation. The defendant, James Garcia, has contacted my office, and as a result of our conversation in my office, I do not know the status of the relationship between us and James Garcia, at this time. He asked that I advise the Court that he was standing still, insofar as I could understand.

The Court: Well, he had better come on in, I told him to, not to stand still, that is the poorest thing a defendant can do, in a proceeding like this. To come on in, that is what I want him to do.

Mr. Chavez: Whatever the Court does -- (Interrupted)

The Court: He will go with the rest of them, he may take a free ride, I don't know, but now then, you haven't filed a response of any kind?

Mr. Chavez: There has been no response filed.

The Court: All right, so I can determine the burden of proof, have you anything to say, this morning, any oral response, or anything, or not? You resist the Motion?

Mr. Chavez: Yes.

The Court: Why? That is what I want to know, why?

Mr. Chavez: Of course we resist it.

The Court: Why?

Mr. Chavez: We resist it, first, the primary position is that there is already pending, a case that will litigate or adjudicate the material questions in a case of competent jurisdiction.

The Court: That is the ejectment suit in Valencia County?

Mr. Chavez: That is right. The United States does not have such an interest, as entitles it to go into a separate Court, and I may advise the Court that subsequent to the filing of the suit in State Court, in Federal Court, the Complaint in State Court was amended to

eliminate from the property desoribed, such land as is claimed by the plaintiff in this case, to be owned either in fee simple by the United States, as private or public domain, such land as it is claimed by the plaintiff to be held by it in trust for the Pueblo of Laguna, thereby leaving in the State case, at this time, only the fee simple land allegedly owned by the Pueblo of Laguna.

The Court: Um-humm. So it leaves in there, then, the so-called fee simple land to the Pueblo, is that right?

Mr. Chavez: Which was claimed by the Pueblo, yes, Your Honor.

The Court: Yes, we don't need a play on words. The land the Pueblo pretends it owns?

Mr. Chavez: Your Honor puts it so -- the defendants, in the State suit, Pueblo of Laguna, and the individual defendants and Anadonda, have gone into the State Court, and by proper Motion, obtained a continuance within which to plead, depending on the judgment of this Court on this -- on the pending Motions.

The Court: The Anaconda did?

Mr. Chavez: The Anaconda did, too.

The Court: Courthouse rumor brought that to my ears, Mr. Chavez. How about the Pueblo of Laguna, did it go in, also? I mean, did it also get a stay in the -- (Interrupted)

Mr. Chavez: It did.

The Court: In the State Court?

Mr. Chavez: Yes, sir.

The Court: Judge, do you want something?

Mr. Johnson: If it please the Court, the defendants, John Herndon and the Anaconda Company, are ready, and the only response which we have filed, done this morning, is an affidavit.

The Court: Yes, I have read it, but I haven't studied it, because I got it a few minutes before I came in here. Well, I believe that is probably a sufficient statement of a response, in there, to have the Government proceed as to my jurisdiction, and to -- (Interrupted)

* * * * *

Mr. France: If Your Honor please, we have prepared a Memorandum on the law in this case, and I would like to submit it to the Court, at this time. Copies have been furnished opposing counsel.

The Court: Are there any other memoranda you would like to favor me with?

Mr. Chavez: We have a memoranda, but it has to be revised in some respects, and we would get it in to Your Honor early in the morning, or late in the afternoon.

The Court: Well, all right, I expected to decide this case, is the reason I was asking. All right. Okeh. I will listen to you very attentively.

Mr. France: If Your Honor please, this is an Action brought by the United States to quiet title to certain described lands in Valencia County, New Mexico, and for a Preliminary and Temporary Injunction against the prosecution of an Action pending in the District Court of Valencia County, in which the plaintiffs request possession of those lands and other lands, and also seek money damages for the alleged unlawful removal of minerals from those lands.

The matter is now before this Court on a Motion for Preliminary Injunction, and an Order to Show Cause has been issued by this Court, and served upon the defendants.

The State Court Action was brought by five members of the Pueblo of Laguna, whose names are Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo and James Garcia. The Defendants in the State Court Action are the Pueblo of Laguna, a number of officers of the Pueblo of Laguna, and the lessee, the Anaconda Copper Mining Company.

The Court: That is in the Valencia County suit?

Mr. France: That is in the Valencia County suit, and one -- the Anaconda holds the mining lease on a portion of the premises involved in both this suit and the Valencia County suit on which premises they have developed a Uranium mine which I will refer to, later, which is one of the largest, if not the largest Uranium producing mine in the United States.

The United States is not a defendant. Docket Number 8016, on the records of that Court.

The Complaint in Docket No. 8016 alleges that the plaintiffs therein, are the owners of what is known as the El Rito Paguate, or it is more commonly referred to as the Paguate Purchase. On page 2 of their Complaint they more particularly describe the lands involved.

I have mentioned, already, that Complaint has been amended, but I will deal with the original Complaint before the Amendment.

The lands, as more particularly described on page 2 thereof, failed to include very substantial areas of the Paguate Purchase, or the El Rito Paguate. It also includes lands lying outside the Paguate Purchase. Now, in the present Action in this Court, No. 3407, it is an Action brought by the United States, the five plaintiffs in the State Court Action are named as defendants. Also, the Anaconda and John Herndon, the official of that company, are named as defendants. The United States, of course, represents the interests of the Pueblo of Laguna, and of the official of that Pueblo who were named as defendants in the State Court Action. Therefore, all parties to the State Court Action are represented in this Action, and in addition, the United States is a party in this Action.

The Indians of the Pueblo of Laguna originally claimed all of the El Rito Paguate Purchase. They submitted evidence of their title to the Surveyor General, as authorized to the Act of 1854, subject to the Treaty of Guadalupe Hidalgo. The Surveyor General reported favorably thereon, his report was relayed to Congress, and Congress confirmed their title

by the Act of June 21, 1860. Subsequent to that, the lands were surveyed by the Surveyor General of the United States, and the Patent issued to the Pueblo on September 22, 1944.

By the express terms of the 1860 Act, this patent has the effect of a quitclaim deed from the United States to the Pueblo, and it covers all of the Paguate Grant, and also substantial areas of land outside of the Grant, claimed by the Indians under another chain of title. (Arguing and citing Cause 1876, U. S. vs. Joseph.)

The Court: I have read the Court file, for that matter.

Mr. France: Unless there is an objection, I would like to make it a record in this case.

The Court: Unless there is some objection?

Mr. Chavez: Yes, there is an objection. The litigation, I think it is 2080, would have no bearing on any material fact that would be necessary to determine the issues in this case, or on the Motion before the Court.

The Court: I had better get them in the record, before I can rule on them, at least. The weight of them and the materiality will be reserved. Otherwise, I will admit them.

(Whereupon, Plaintiff's Exhibit "A" was admitted in evidence, being a Certified copy of the decree in Cause No. 2080, Civil.)

Mr. France: The first three Claims for relief involved lands owned by the Pueblo of Laguna, but which are contended, by the Government, are restricted lands, and can only be disposed of by Congress.

Now, the other lands include lands outside the Paguate Purchase, lands reserved for its use by two Executive Orders, immediately south of the Paguate Purchase, and a small part of them is lands included in the State Court Action.

The Court: Have you folks made up any plats or maps, to make it clear?

Mr. France: I have some plats, here.

The Court: Have you shown it to the other side?

Mr. France: They haven't seen it.

The Court: I think I will understand everyone's argument better, if I have a plat.

Mr. France: The map at which you are now looking, Your Honor, has been designated as Map A, by me. The area outlined in red, is the original Paguate Purchase. The area north, with the blue outline, is the boundary of the Ceboletta Grant.

Now, if we can look at the next map, the one underneath, outlined in purple, here, are the lands included in the State Court Action. You will notice the Paguate Purchase lines are outlined with the heavy line, here (indicating), and there are substantial areas outside the Paguate Purchase. There are certain lands in the Cubero land, which are not described in the State Court Action. There are lands in the Cebolleta, that are not included in the State Court.

The Court: As originally filed, or amended?

Mr. France: No, sir, I can show you what the Amendment excludes, but I don't have a map. I mentioned that certain lands were lost to the Indians, they found that the Cubero Grant had a superior title. There is a slight conflict up here. The lands outlined in blue were lost to the owners of the Cebolleta Grant. The lands outlined in green were lost to the owners of the Baca Grant. So the decree in 2080 quieted title to the Indians in the Paguate Purchase outside the colored lines in this lands, and those are the lands included in the first Claim for Relief in the Complaint in this Action.

There is one small area in the extreme east end, which is in the Paguate Purchase and included in the Claim for Relief, which is not included in the State Court Action.

Now, the next map outlines in brown, the areas which were purchased by the Indians, as I mentioned a while ago. This was the Baca Grant, they purchased all of the lands of the Baca Grant. This, in brown, was lost to the Cebolleta

people, was repurchased by the Indians, but the Pueblo of Laguna did purchase this, outside of the Cebolleta Purchase, and that is included in the Amended Complaint, and also included in the Second Cause of Action, as well as these other two areas in the Government's Complaint.

The Second Cause of Action covers the lands outlined in blue. Then, the Pueblo of Laguna owned certain lands immediately south, acquired but included in the 1884 Patent. That is the area outlined in green on this map, this map being designated Map E. The area in the north part, north of the broken green line, is included in the State Court Action, and is included and is the land described in a Third Claim for Relief in the Action before this Court, this small area along the north end of the El Rito Grant.

(Whereupon, Mr. France then cited Lighter Minerals Inc., v. U. S., 352 U. S. 220.)

The Court: What interest do you claim in the United States of America, the Plaintiff in this case, claims in the lands involved in the Valencia County's State Court Suit, as Amended? What is the nature of the title, as you -- (Interrupted)

Mr. France: The title is a fee tile in the Pueblo of Laguna, subject to the restrictions that it cannot be encumbered.

The Court: As to alienation, as to the restraint of alienation?

Mr. France: Yes, sir.

The Court: All right.

Mr. France: And I will come to that in considerable detail, in a moment, with respect to those lands.

The Court: All right, go ahead.

(Whereupon, Mr. France then cited the Sandoval case of Heckman v. U.S, 224 U.S, 413; 322 U.S. 363; Civil Cause No. 3384, U. S. District Court; 189 Fed (2) 31.

(The Court Reporter marked Plaintiff's Identification No. "2", being an affidavit of John T. Sherman.)

The Court: You have already moved the introduction, any objection?

Mr. Chavez: There is no objection to it.

The Court: All right, it will be received.

(Plaintiff's Identification No. "2" admitted in evidence as Exhibit "B".)

The Court: Do you contend that if I do assume jurisdiction, if I do stay the proceedings in Valencia County, that the defendants Alonzo and Garcia, will be able to file a Cross Claim by way of ejectment?

Mr. France: No, sir.

The Court: They would be able to?

Mr. France: No, sir.

The Court: They would not be able to?

Mr. France: No, sir, that would be, in effect, a suit against the United States, and there can only be a suit against the United States in the manner prescribed. Congress has never consented to a suit on the lands of Indians, and that applies to Cross Claims, as well as primary Claims. That was 309 U. S. 495.

The Court: You don't have that in your brief?

Mr. France: No, sir. 309 U. S. 495. U. S. versus Shaw, and also, in the case of U. S. versus United States Fidelity and Guaranty Company, 309 U. S. 506, in which it was held that when the United States brought an Action, it did not consent to a Cross Complaint, or a Cross Claim of any kind, unless expressly authorized by Congress.

The Court: That consent has to be one that is predicated upon an Action of Congress?

Mr. France: Yes, sir. That is the way I understand the decisions in those two cases, Your Honor.

The Court: Well. Proceed. Now, I am just about to take a recess, I wanted to find out from the Plaintiffs, is anyone else going to argue for the Plaintiff at this time, Mr. France, or is that -- (Interrupted)

Mr. France: No, sir.

The Court: That is no indication it was incomplete, I just wanted to know, I just wanted to figure it out. All right, there may be rebuttal from somebody else, is that right? You can't tell, yet.

Mr. France: I don't know, yet, Your Honor.

* * * * *

The Court: Say, Mr. France, I want to visit with you some more. You said the defendants couldn't bring an Action for ejectment in a jury trial, how about a Cross Complaint on a Quiet Title?

Mr. France: They cannot bring a Quiet Title against the United States, if I properly understand the Shaw and U. S. F. & G. cases.

The Court: I have been reading Shaw. At the same time, in a negative way, I can refuse the relief you want, as to certain tracts, isn't that right?

Mr. France: You could refuse the Preliminary Injunction?

The Court: No, I am not talking about the Preliminary Injunction, I am talking about the final Action, in here. I would, at least, have power, as a U. S. Judge would, to refuse to quiet your title to certain lands.

Mr. France: If you found that the United States or the Pueblo Indians did not have a good title.

The Court: That is what I mean, and to enter a decree that they didn't. I don't know what the facts are, I haven't any idea.

Mr. France: I don't feel it is proper to quiet title on a preliminary injunction.

The Court: No, I am not even attempting to, but what I am trying to obtain is a concept of the powers of the United States District Court, where you bring a suit to quiet title against people, you have already stated and quoted the Shaw, and U. S. F. & G., I have only read the Shaw case, over the recess, which apparently is in line with what you said. I want to appraise it a little more, but I am now attempting to find out from you, if an equitable Cross Complaint, you think that is also within the ambit, the ambit of the Shaw and the U. S. F. & G. case?

Mr. France: I think a Cross Action against the United States is. I think the defendants, in their Complaint, complete title in their lands, and if they show title, this Court can say they have no right, title or interest, and it is a Quiet Title between the parties.

The Court: And that the defendants own it? Okeh, that is what I wanted to find out. Proceed for the defendants.

Mr. Chavez: If it please the Court, at this time the defendants, in 3407, move that the Motion praying for an injunction be denied, for failure of the movant to show grounds, sufficient grounds or proper grounds upon which an injunction could issue from this Court, enjoining the defendants from proceeding in the State Court proceedings.

The Court: Overruled.

Mr. Hamilton: May it please the Court.

The Court: Yes, Mr. Hamilton.

Mr. Hamilton: The issue in this case, is a comparatively simple one. It is whether a Federal District Court should issue an injunction directed to plaintiffs for maintaining a case in the State Court, staying them from prosecuting the case, and thereby staying the case, itself. This involves a question of the judicial frontier of State-Federal relationships, and for that reason, is one of the most important cases, which, in recent years, has reached the District Court

of the United States.

I am content with a great part of the Statement of Facts by my honorable colleague on the other side of the case, but because the fact serves as a background for my own argument, I should like very briefly, to re-trace some of that territory.

In this case, we are a bit bothered, because of the fact that the Show Cause Order is directed to us, and at two places in that Order, it is stated that it is probable that it will issue, and yet, to the contrary, the writ asked for, is a writ that is rarely used, only on exceptional cases, and issues only upon a showing that leaves no doubt to the contrary. In other words, the problems are set down against us, the presumptions on the other hand are against the issue of the writ.

Now, case No. 8016 was filed by citizens of New Mexico, in the State Court. The laws of New Mexico give standing, they create the cause of action, and they appoint the County in which the suit shall be brought, subject, of course, to a Motion for a Change of Venue. An Act of the Territory of New Mexico, which has been on the -- which is more than a hundred years old, and which is on the Statute Books, recognizes the right of Indians and Indian communities, as juristic persons, entitled to sue and to be sued, and consequently to take advantage of the State Action. It was not the intent, in filing the Complaint, to stage a controversy with the United States. The United States is not mentioned in the title, and is not referred to in the body of the Complaint, but after the Complaint in Federal 3407 was lodged, it was evident that the United States was claiming an overlap. For that reason, a Clarifying Amendment was filed to our Complaint, and this Clarifying Amendment, then, is of such a character as my colleague in the case will go into questions of lands and Territories, and things of that kind, a matter on which I am not competent to speak, but with the Clarifying Amendment, there is excluded from this case all lands which belong to the United States, as Sovereign, and all lands owned by the United States in which it holds a Possessory Interest. The result is that, then, 3407 is concerned with lands which, I am told, are not allotted lands, but I cannot speak on that, and in this Domain, if the United States has any road, that

is its road, only as a protector of the Indians (citing Leader case; p 169 Felix Cohen Handbook; 28 Judicial Code 2283.)

Mr. Chavez: U. S. versus Minn (also citing Candelaria case; Martinez v. Martinez, 49 N. M. 83; Leader Minerals v. U. S; Cinsco v. U. S. 208 F. (2) 406, Certiorari denied 348 U. S. 818; Bank of New York, 296 U. S. 463; Heller case, 1923, 291 Fed. 416; p. 169 Cohen Handbook).

The Court: They say the restricted Indian Lands is land in which the United States has an interest. The Supreme Court said that, Mr. Chavez.

(Whereupon, Mr. Chavez also cited Article 21, Sec. 2, New Mexico Constitution; Utah Code Anno. 1953, Vol. 1, Article 3, Sec. 2, second paragraph.)

Mr. Chavez: I may state, in summary, that the plaintiffs come in here, in the only two cases where the plaintiff, the United States of America, in this Court, where they can show an Injunction has been issued to stay the Court proceedings, would be the Leader case, and in that case, the Courts entitled the United States to the mineral interest was at issue, and the Ava case, likewise. The case where the interest has not been sufficient, such as the Parkhurst case, the Motion to enjoin has been denied.

I may say they have put forward an affidavit by J. D. Nagle, as to the operation of the mining property, the suit in the State Court has been pending, now, for some twenty-two -- twenty-three days, and I don't think any interruption in the mining operation has taken place. The suit in the State Court does not seek to interrupt the operations, at all, insofar as there being a National interest, the operations have continued, and there is nothing in the State suit asking they be stopped, to injure the National interest, if there be such a National interest. Thank you, Your Honor.

The Court: Yes, is anybody else going to talk for the defendants, or not? I am just simply trying to work out a timetable, here. Judge Johnson?

Mr. Johnson: If they are through, may I make a --

The Court: No, I will tell you, I want to eat lunch,

before I hear you. Half past one. Thirty minutes after one, we will be in recess.

(Whereupon, at 11:55 o'clock A. M., Court was recessed until 1:30 o'clock, P. M., at which time, the parties being present as at the morning session, the following proceedings were had.)

The Court: I understand Mr. Ortega has some words?

Mr. Ortega: Very brief, Your Honor.

The Court: That is all right, I have all day.

(Whereupon, Mr. Ortega cited 224 U.S. 413 (1912); 322 U. S. 363; 25 U. S. C. Sec. 175; 208 Fed. (2) 406; U. S. v. Parker; Cause No. 2283;)

Mr. Ortega: If it please the Court, there is another item from the argument. An affidavit was served on us approximately fifteen minutes before this proceeding began, by J. D. Nagle. We have not had, by virtue of the delayed service, the chance to prepare any counter-affidavits for filing in this cause, and we Pray leave to file such counter-affidavits as we deem would be correctly filed.

The Court: Well, now, this is by a co-defendant?

Mr. Ortega: So-called, Your Honor.

The Court: Um-humm. I am looking at the divider of the versus, in there. Well, I will see about that. Let me have that memorandum you argued from.

Mr. Ortega: Yes, Your Honor. It is not complete, Your Honor.

The Court: Well, it looks like it. Thirteen pages.

Mr. Ortega: We would request leave to submit such supplemental authorities as we might wish to submit, within a reasonable time, to further satisfy the Court.

Mr. Johnson: We wish to state our position. We are, of

course, a defendant in the State Court proceeding, in which, as of this time, a judgment of $31,000,000 is asked, and also, that we be ousted from the property.

Now, that suit stands, it is a deterrent to any business concern, as to what plans they may lay, as to what their future operations may be, they have no certainty, whatever. This litigation creates that uncertainty, whether it is in the Federal Court or in the State Court, but if my ears did not deceive me, I understand Mr. Chavez correctly, he stated that, after the State Court had concluded the litigation, and if it should be adverse to the Pueblo of Laguna, that the Government was in a position to come into the Federal Court, there is nothing to stop them, and relitigate the whole matter, if I correctly understood it, and I think that is true.

Now, if we were to follow what they want to do, we are exposed, for a much longer period of time, to the uncertainty of litigation. The Court will see, from the affidavit that has been filed, here, by Mr. Nagle, which I am quite sure they wouldn't be able to contradict his figures, that the Anaconda has spent a tremendous amount of money, already, that they have under consideration, at this time, further expansion of an affirmative nature, in the excess of $1,000,000 right now, and all those factors, right now, add up, so their standpoint, that we feel that this litigation should be in a Court that can make a final determination of the rights of the parties, and that we not be put to the expense and the time of going through State Court litigation, and then find that it still comes to the United States District Court for determination.

So we are very happy to be in a Court which, we understand, does have jurisdiction, and can take jurisdiction of all the parties that are involved, and that, once it is decided, here, everybody can go forward with some assurance that title has been established, one way or another.

The Court: You look happier than you usually do, in this Court. Mr. France, have you any rebuttal?

Mr. France: Yes, Your Honor, I would like to make a rebuttal.

The Court: Sure.

Mr. France: (Citing U. S. v. Equitable Trust, 283 U. S. 738; 145 Fed. (2) 622, Certiorari denied 324 U. S. 834.)

The Court: Now, you summarized the Government's interest in these lands, in what way?

Mr. France: Well, I think that is covered pretty well by the Sandoval and the Candelaria cases.

The Court: Is that it, is that what you are basing it on?

Mr. France: And Sec. 17 of the Pueblo Lands Board Act. I don't think a Statute is necessary. If there is no Statute, then the United States does not have the same right to go in and protect the lands. The Court in Sandoval and in Candelaria, made no such distinction. But if there is such a distinction, then there is Sec. 17 of the Pueblo Lands, and quoted on page 3 of the Government's brief.

The Court: Before I reflect my ideas, does the Government offer those maps for the purpose of illustration? You talked from them.

Mr. France: Yes, I would be glad to offer in evidence, the five maps which are designated as maps "A" through "E"./

The Court: Yes, well, we will mark them, we will put our brand on them, whatever it is.

(Plaintiff's Exbibit "C" through "G" marked and admitted in evidence.)

The Court: Have you any objection?

Mr. Chavez: Not for the purpose of illustration.

The Court: All right, fine. I have looked at the Exhibits and listened to the argument of counsel with a great deal of interest. This is a very important suit. I might have indulged in some informality a d alleged humor, at times, but that is not to be considered that I do not realize the extreme importance of this litigation to the defendants, here,

to the Laguna Pueblo, and to the Government.

It has been a pleasure to have such a cosmopolitan Bar arguing this matter. Mr. France, of the Department of Justice, Mr. Hamilton of Mr. Therman Arnold's law firm -- a partner of his, supplemented by home-grown attorneys. It certainly has been a pleasure. I appreciate it very much, and I think we have had the full sweep of the law, as it applies to the problem here involved.

I have recently had occasion to look into some phases of the law, which are, to me, most fascinating, and which are unknown, I would say, to ninety-eight per cent of even New Mexico lawyers, and one hundred per cent unknown to the balance of the Bar and the Courts of this nation. I am positive of that.

I am particularly interested in this case, because it does involve comity; comity between Federal and State Courts. The philosophical dissertation to which were treated by Mr. Hamilton, graphically brings that matter to a head, here. He said originally the difficulty was engendered by contests for fees. Luckily, neither the State Courts, nor we Federal Courts are employed in such a contest. We are much better off than State Courts, but that is all right, too, especially from my standpoint. So that -- but I imagine that was the story. It is now reflected in our Precinct Justice of the Peace Courts, where I practiced for so many years, to my horror.

But as to comity, I do have a predilection toward that doctrine, toward State rights, and I have an absolute feeling toward the doctrine of comity. I have listened enrapt, here, all morning, for forty minutes this afternoon. I will ask you to indulge me for two or three minutes, while I tell you what has happened when I have been so faithful to comity.

I had a case called "Your Food Stores", in here. They were -- they brought an Action here -- no, they had obtained a Labor Injunction in the State Court of Santa Fe, and they brought it over here. The National Labor Relations Board had established a floor, I believe it is, instead of a ceiling, a floor, and so the Inter-State volume wasn't enough for that body to make jurisdiction. There was a vacuum, so in the

interests of comity, I sent it on back. There wasn't anything I could do; there wasn't anything any Labor Relations Board would do. So I figured there was no finer Judge than the State Judge, let them litigate it. It was appealed, and I bit the dust on that. In other words, a vacuum or not, I should have denied it.

Then New Mexico, in loyalty to its citizens, requires Insurance Companies to put up certain securities up there with the State Treasurer. A two-bit Insurance Company went on the rocks, but they did have, even over the Statutory amount. Judge Carmody was having a Conservator appointed to administer the assets for the benefit of our New Mexico citizens. In came a Receiver appointed by my good friend, Judge Christensen. Judge Christensen, of the Federal Court of Utah, in here. I said "No, un-hunn, comity. Comity with the State Courts. I won't even hear about it." I went up to the Court of Appeals, and I bit the dust there, again. They said "No, that was up to Judge Christensen to exercise his" -- a Utah Judge. I don't care if he is a Federal Judge, or not, he is born in Provo, I know how that is, I was born in New Mexico, but they wanted him to exercise a discretion, and not me, in there, so there is the second one.

And there is a fellow by the name of Danny Rea. We have had some Marijuana. The U. S. Attorney's office -- no, they didn't make a mistake, I want to apologize, Mr. Larrazolo, it was the Narcotic Agent had the wrong kind of a Search Warrant. Everything was wrong with it. He had just transferred over from the State Agency; it came up in front of me. I quashed the Search Warrant, dismissed the Indictment. Then the Narcotics Agent went over into the State Court, filed a suit there. In came Mr. Rea -- he loved the Federal Court by then, he had had fine treatment -- he wanted an Injunction, he wanted me to use Contempt Proceedings against this Narcotic Agent. Well, I figured it was none of my business, it was up to the State. Besides, there was a case called Wolfe vs. Colorado, in there. So I figured Comity, Judge Arledge, Judge Tackett, whoever it was over there, there are plenty of good Judges. They appealed it to the Court of Appeals, and I didn't bite the dust, then, but they appealed to the Supreme Court of the United States, and I did. Those are three of the four reversals I have had in the past three years, from comity. I still have a predilection of comity, and I am a

State's Rights man, at heart, and I approach this problem very carefully, very cautiously.

I find that a portion, at least, of the premises involved in this case, are owned in fee by the Pueblo of Laguna, as the term "fee" is used in Indian Law. But there is ever present that interest in the Government of the United States. You can call it a Guardian, Trustee, Protector, whatever it is. To me, one type from the other is a distinction without a difference. The United States of America, in my opinion, has such an interest in all, at least, of the lands involved in both the Valencia County suit, and in the instant cause, as to predicate this instant Action, and justify the Injunctive relief here sought.

I have looked over the original Pleading in the Valencia County suit, and I note, among the Prayers, that they seek a large sum of money -- $31,000,000 from those persons named as defendants, including the Pueblo of Laguna, including Anaconda. I don't believe that I would predicate jurisdiction or Injunctive relief alone on the National defense, but I will add that to my primary basis, that is, the interest of the United States.

Now, there is some language of the Supreme Court of the United States that I don't think that you can ignore. It eminates from the case of U. S. vs. Sandoval, 231 U. S. 28. When they discussed Indian lands -- title to Indian lands -- Justice VanDevanter, who did know title to western lands and it multifarious forms, wrote this Opinion. Among other things he said this:

"It also is said that such legislation cannot be made to include the lands of the Pueblos, because the Indians have a Fee Simple Title."

This is legislation as to liquor.

"It is true that the Indians of each Pueblo do have such a title to all the lands connected therewith, excepting such as are occupied under Executive orders, but it is a communal title, no individual owning any separate tract. In other words, the lands are public lands of the Pueblo, and so the situation is essentially the same as it was with the Five

Civilized Tribes, whose lands, although owned in fee under patents from the United States, were adjudged subject to the legislation of Congress enacted in the exercise of the Government's guardianship over those tribes and their affairs."

I don't care whether it is Guardianship, a Ward, Trustee, a cestui que trust, or the Protector, over these Tribes, the United States of America, I think, has sufficient interest to maintain the suit and secure this Injunction. I will resist the allure offered by Mr. Ortega, of emancipating, as he says, the Laguna Pueblo. They haven't asked me to. I doubt if I could, I don't think they would want to pay $31,000,000 to be emancipated, either; right now. We will leave it up to our friends in Congress.

I have no idea, at all, what the theory of the defendants is, in this case; absolutely none. I hear Court-house corridor rumors about other theories of cases, but there is certainly not a syllable has reached my ear, and I don't know, but any theory or theories they have, can certainly be raised, and I will give it my rapt attention and careful consideration and study. I don't know what it is, but if there is a theory that they care to produce, I will certainly entertain it. I see no use of having the State case progress, especially if there would be an opportunity to go right in the face of any decree they had, and litigate it. Maybe, after I am in the case, the issues will be presented that will make it expedient, wise, legal and jurisdictional, for the State proceedings to continue. I can't dismiss Judge McManus' suit, he doesn't dismiss mine, but I am going to ask him -- I am going to ask these defendants. I might put it a little stronger than that, in the Preliminary Injunction, stay out of Las Lunas.

Court is in recess.

Mr. Larrazolo: Your Honor, could I just say a word? Could the comments of the Court, now, be made the Findings of Fact and Conclusions of Law?

The Court: They indeed are. That is why I talked so long.

Mr. Chavez: If the Court please, I think the time for

answering in Federal Court, is tomorrow. I wonder if we would have at least until Monday, if possible?

The Court: Next Friday, how will that be?

Mr. Chavez: A week from this coming Friday?

The Court: Yes, you indeed may. Court is in recess.

(Whereupon, at 2:23 o'clock, P. M., Court was recessed.)

Filed April 2, 1957.

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[Plaintiff's exhibit A is composed of certified copies of the final decree, filed July 20, 1931, the final decree filed November 2, 1931, a stipulation as to final decree, filed November 9, 1931, and the final decree, filed November 9, 1931, in case No. 2080, United States District Court, District of New Mexico, United States of America, as Guardian etc., vs. Armijo et al. The original exhibit is on file in the Clerk's office.]

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Plaintiff's Exhibit B.

In The United States District Court For The District Of New Mexico, United States Of America, Plaintiff v. Lupe Alonzo, Jim Alonzo, Joe Alonzo, Valentino Alonzo, James Garcia, John Herndon and The Anaconda Company (formerly The Anaconda Copper Mining Company), a Corporation, Defendants. Civil Action No. 3407.

Affidavit Of John T. Sherman District of Columbia SS:

I, John T. Sherman, of full age, being duly sworn upon my oath, depose and say:

1. I am Assistant Director for Domestic Procurement of the Raw Materials Division of the Atomic Energy Commission and in such capacity supervise purchase by the Atomic Energy Commission of uranium-bearing ores and concentrates derived from domestic sources.

2. The Atomic Energy Commission has entered into a contract with The Anaconda Company, a corporation organized under the laws of the State of Montana, under which contract said company has built a plant near Bluewater, New Mexico, for processing uranium-bearing ores into uranium concentrates which are sold and delivered to the Commission. Said plant is currently in operation and the uranium concentrates produced are being sold to the Commission. According to its terms, the contract will continue in full force and effect until March 31, 1962, or shortly thereafter unless a stipulated maximum amount of uranium concentrates is delivered prior to said time.

3. According to information available to me, over ninety (90) percent of the concentrates being produced at the Anaconda plant near Bluewater, New Mexico, under said contract are derived from ores mined from the Jackpile Mine located in Valencia County, New Mexico. No other uranium deposits in the immediate vicinity of said plant have been sufficiently developed to produce at this time the tonnage of uranium-bearing ore presently being mined at the Jackpile Mine, as aforesaid.

4. The uranium concentrates which were delivered by The Anaconda Company to the Commission from said plant during calendar year 1956 accounted for more than thirty (30) percent of all concentrate receipts from domestic sources during this period. This percentage is expected to be less in the year 1957 and subsequent years. However, any cessation of delivery of ore from the Jackpile Mine which might take place at this time which causes a shutdown or substantial reduction for any appreciable period in said production of uranium concentrate at the plant at Bluewater, New Mexico, and delivery of production to the Atomic Energy Commission would adversely affect the uranium procurement program of the Atomic Energy Commission. It would also have a clearly harmful effect on the Commission in meeting its responsibilities in connection with the national defense.

John T. Sherman

Subscribed and sworn to before me this 19th day of February, Nineteen Hundred Fifty-seven, at Washington, D. C.

(Seal)

Hannah W. Grosvenor
Notary Public

My Commission Expires April 14, 1960

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[Plaintiff's exhibits C to G, inclusive, are the large maps, referred to at page 57 . The original exhibits are on file in the Clerk's office.]

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77] Clerk's Certificate.

United States Of America, District Of New Mexico.

I, Wm. D. Bryars, Clerk of the United States District Court for the District of New Mexico, do hereby Certify:

That the attached and foregoing pages numbered 1 to 76, inclusive, are the original pleadings, order, Preliminary Injunction and other documents specified in the Designation of the Record on Appeal by the appellants in that certain civil action lately pending on the docket of said court entitled and numbered as shown by the title page of this record,

That the Reporter's Transcript of Proceedings, consisting of 32 pages, separately bound, is the original of said transcript as certified by the Reporter and filed in my office in said cause. That Plaintiff's Exhibits A thru G, separately bound, are the original exhibits filed in said cause.

Witness, my hand and the seal of said Court at Albuquerque, in said District on this the 5th day of April, 1957.

(Seal)

Wm. D. Bryars
Clerk of said Court

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Filed United States Court of Appeals Tenth Circuit April 12, 1957, Robert B. Cartwright, Clerk.